WEST VIRGINIA CODE: §30-3G-9

§30-3G-9. Rulemaking.

(a) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Commission rules shall become binding as of the date specified by the commission for each rule.

(b) The commission shall promulgate reasonable rules in order to effectively and efficiently implement and administer this compact and achieve its purposes. A commission rule shall be invalid and have no force or effect only if a court of competent jurisdiction holds that the rule is invalid because the commission exercised its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted hereunder, or based upon another applicable standard of review.

(c) The rules of the commission shall have the force of law in each participating state: *Provided*, That where the rules of the commission conflict with the laws of the participating state that establish the medical services a physician assistant may perform in the participating state, as held by a court of competent jurisdiction, the rules of the commission shall be ineffective in that state to the extent of the conflict.

(d) If a majority of the legislatures of the participating states rejects a commission rule, by enactment of a statute or resolution in the same manner used to adopt this compact within four years of the date of adoption of the rule, then such rule shall have no further force and effect in any participating state or to any state applying to participate in the compact.

(e) Commission rules shall be adopted at a regular or special meeting of the commission.

(f) Prior to promulgation and adoption of a final rule or rules by the commission, and at least 30 days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a Notice of Proposed Rulemaking:

(1) On the website of the commission or other publicly accessible platform; and

(2) To persons who have requested notice of the commission’s notices of proposed rulemaking, and

(3) In such other way(s) as the commission may by rule specify.

(g) The notice of proposed rulemaking shall include:

(1) The time, date, and location of the public hearing on the proposed rule and the proposed time, date, and location of the meeting in which the proposed rule will be considered and voted upon;

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(2) The text of the proposed rule and the reason for the proposed rule;

(3) A request for comments on the proposed rule from any interested person and the date by which written comments must be received; and

(4) The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing or provide any written comments.

(h) Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

(i) If the hearing is to be held via electronic means, the commission shall publish the mechanism for access to the electronic hearing.

(1) All persons wishing to be heard at the hearing shall as directed in the Notice of Proposed Rulemaking, not less than five business days before the scheduled date of the hearing, notify the commission of their desire to appear and testify at the hearing.

(2) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(3) All hearings shall be recorded. A copy of the recording and the written comments, data, facts, opinions, and arguments received in response to the proposed rulemaking shall be made available to a person upon request.

(4) Nothing in this section shall be construed as requiring a separate hearing on each proposed rule. Proposed rules may be grouped for the convenience of the commission at hearings required by this section.

(j) Following the public hearing, the commission shall consider all written and oral comments timely received.

(k) The commission shall, by majority vote of all delegates, take final action on the proposed rule and shall determine the effective date of the rule, if adopted, based on the rulemaking record and the full text of the rule.

(1) If adopted, the rule shall be posted on the commission’s website.

(2) The commission may adopt changes to the proposed rule provided the changes do not enlarge the original purpose of the proposed rule.

(3) The commission shall provide on its website, an explanation of the reasons for substantive changes made to the proposed rule, as well as reasons for substantive changes not made that were recommended by commenters.

(4) The commission shall determine a reasonable effective date for the rule. Except for an

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emergency as provided in subsection (l) of this section, the effective date of the rule shall be no sooner than 30 days after the commission issued the notice that it adopted the rule.

(l) Upon determination that an emergency exists, the commission may consider and adopt

an emergency rule with 24 hours prior notice, without the opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in this compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately by the commission in order to:

(1) Meet an imminent threat to public health, safety, or welfare;

(2) Prevent a loss of commission or participating state funds;

(3) Meet a deadline for the promulgation of a commission rule that is established by federal law or rule; or

(4) Protect public health and safety.

(m) The commission or an authorized committee of the commission may direct revisions to a previously adopted commission rule for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made as set forth in the notice of revisions and delivered to the commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

(n) No participating state’s rulemaking requirements shall apply under this compact.

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