



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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November 17, 2002

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Marianne Kapinos
Health Care Authority
100 Dee Drive
Charleston, WV 25311

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Benchmarking and Discount Contract Rule, 65CSR26**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

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SCANNED

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ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Health Care Authority

101 SEP 27 A 9:37

Subject: Benchmarking and Discount Contract Rule 65C SR26

COMMONWEALTH OF VIRGINIA
SECRETARY OF STATE

PERTINENT DATES

Filed for public comment: June 26, 2002

Public comment period ended: July 26, 2002

Filed following public comment period: July 26, 2002

Filed LRMRC: July 26, 2002

Filed as emergency:

Fiscal Impact: None

ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 2 is an introduction. It has been amended to remove obsolete language.

Section 3 defines terms. The definition for "PEIA IME factor" has been amended to just "IME factor" with the factor now being developed by the Authority rather than PEIA. A definition has been added for the term "Outliers".

Section 4 is an overview. It has been amended to remove language which related the ability to use benchmarking to the hospital's costs and charges. Language has been added stating that hospitals with lower costs and charges receive a higher rate of increase under the benchmarking model.

Section 5 relates to the calculation of benchmark rankings. It has been amended to remove obsolete language and requires the

Authority to annually notify all acute hospitals of their rankings and the increase for which they are eligible.

Section 6 relates to peer groups and the variables of the benchmark ranking process. Language has been deleted which excluded critical access hospitals from the benchmarking process, until there were at least 10 in the state, and language making hospitals in the 20th percentile of each peer group above either the median inpatient charge per discharge or the median cost per discharge ineligible for benchmarking.

This section sets forth two variables, inpatient charges and inpatient costs, which are employed in analyzing the peer groups in the benchmark ranking process. The current rule lists several factors which are used to adjust inpatient charges and inpatient costs. Compliance adjustments in the rates and outliers have been added to the list of factors.

Section 7 relates to allowed adjustments. Under the current rule, adjustments in a hospital's average non-governmental inpatient charge per discharge is determined based upon the hospital's ranking in its peer group for the primary variable inpatient charge per discharge. The proposed rule states that the hospital shall be ranked based both upon inpatient charge per discharge and inpatient cost per discharge. Under the current rule the Authority calculates adjustments using the hospital's prior year's approved non-governmental charge per discharge. The proposed rule requires the Authority to calculate the adjustments using the hospital's projected actual non-governmental charge per discharge.

Under the current rule, the standard allowed increase is based on the DRI forecast hospital price index increase. Under the proposed rule, increases will range from 2% to a maximum of 7%, based upon the scale set forth in an appendix.

Section 8 relates to outpatient services. It states that outpatient services are not included in the benchmarking analysis because of lack of data. Language has been added stating that, when this data becomes available, outpatient services may be included in the benchmarking analysis. Under the current rule, an automatic rate adjustment is provided for outpatient rates that is different from the adjustment to inpatient rates. The proposed

rule provides for the same rate of increase for both inpatient and outpatient charges. Under the current rule the Authority calculates adjustments using the hospital's prior year's approved non-governmental charge per discharge. The proposed rule requires the Authority to calculate the adjustments using the hospital's projected actual non-governmental charge per discharge.

Section 9 relating to the procedure for requesting a rate increase under the benchmarking system has been deleted.

Old Section 10 relates to the procedure for requesting a rate increase under the benchmarking system. It specifies information which must be contained in an application for a benchmark increase. In addition to this information, the proposed rule requires the benchmarking checklist and a copy of the hospital's current license.

Section 11 relates to review by the authority. Language has been deleted relating to the issuance of an order by the Authority setting the hospital's approved revenue limits.

Section 12 relating to the order has been deleted.

Section 13 relating to revised budget and schedule of rates has been deleted.

Section 14 relates to notice to the community. Under the current rule, a legal advertisement must state the requested amount of the rate increase or decrease based upon the hospital's projected actual and current approved revenue limits per non-governmental discharge and for non-governmental outpatient visit, and summarize the affect of the requested relief. The requirements regarding current approved revenue limits and the summary have been deleted.

New Section 14 relates to compliance. It states that if a hospital's average charge per discharge for non-governmental inpatient exceeds the average allowed amount, it is subject to reductions in its requested rates for unjustified overages. The hospital may justify the overcharge, if it can demonstrate that there has been an increase in its Case Mix Index (CMI) or an increase in outliers.

It states that if a hospital's average charge per discharge for non-governmental outpatient visit exceeds the average allowed amount, it is subject to reductions in its requested rates for unjustified overages. The hospital may justify the overcharge, if it can demonstrate that there has been a change in the mix of outpatient services being provided.

Under this section, the Authority may reduce a hospital's requested rates, if the hospital is not in compliance with budgeted amounts for other items subject to review under the standard rate review process. The Authority may also use penalties and reductions held in abeyance from prior years to reduce requested rates.

New Section 15 relates to denial of an application. This section contains the provisions of Section 20 of the current rule. It has been amended to set forth several other basis upon which the Authority may deny an application.

New Section 16 relates to order. It contains provisions of Section 12 of the current rule. In addition, it requires the Authority to issue the order setting the hospital's approved revenue limits no later than five days prior to the beginning of the hospital's fiscal year except when a hearing is requested pursuant to Section 12.

Section 17 relates to the revised budget and schedule of rates. It contains provisions of Section 13 of the current rule. It has been amended to relate the time line to the effective date of the order rather than the receipt of the order.

Old Section 20 relating to compliance reports and orders is Section 15 of the proposed rule.

Section 23 relates to discount contracts. The current rule requires the Authority to determine the compliance of hospitals at the end of each fiscal year. The proposed rule would require the Authority to determine compliance during the review of the rate application and throughout the year.

Section 28 relates to decisions and records available. The current rule provides for a charge to copy records of 25 cents per

page with a \$5 handling charge. The proposed rule removes the specific fees and allows the Authority to determine them.

Table 65-26A relates to rate increase scale for hospitals under the benchmarking system. It has been amended to reflect the allowable 2% to 7% increase in lieu of rate increases based on the DRI increase.

Table 65-26B relating to the calculation of penalty for overcharging in excess of 2% has been deleted.

New Table 65-26B relates to case mix justification calculation. It has been amended to reflect changes in the rule.

Tables 65-26D; -26E; -26F; and -26g have been deleted.

AUTHORITY

Statutory authority: W.Va. Code, §§16-29B-8 and 20, which provide, in part, as follows:

§16-29B-8

(a) In addition to the powers granted to the board elsewhere in this article, the board may:

(1) Adopt, amend and repeal necessary, appropriate and lawful policy guidelines and rules in accordance with article three, chapter twenty-nine-a of this code: *Provided*, That subsequent amendments and modifications to any rule promulgated pursuant to this article and not exempt from the provisions of article three, chapter twenty-nine-a of this code may be implemented by emergency rule...

§16-29B-20

...(2)...(B) the board may promulgate rules, in accordance with the provisions of section eight of this article, that establish the criteria for review of discount contracts, which shall include that: (i) No discount shall be approved by the board which

constitutes an amount below the cost to the hospital; (ii) the cost of any discount contained in the contract will not be shifted to any other purchaser or third-party payor; (iii) the discount will not result in a decrease in the hospital's average number of medicare, medicaid or uncompensated care patients served during the previous three fiscal years; and (iv) the discount is based upon criteria which constitutes a quantifiable economic benefit to the hospital. The board may define by rule what constitutes "cost" in subparagraphs (i) and (ii) of this paragraph; "purchaser" in subparagraph (iii) of this paragraph; and "economic benefit" in subparagraph (iv) of this paragraph. Any rules promulgated pursuant to this subsection may be filed as emergency rules.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.