WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: STATE TAX DEPARTMENT TITLE NUMBER: 110

CITE AUTHORITY W. VA. CODE § 11-3-9

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 3

TITLE OF RULE BEING PROPOSED: EXEMPTION OF PROPERTY FROM AD VALOREM PROPERTY TAXATION

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Michael E. Caryl

MICHAEL E. CARYL
STATE TAX COMMISSIONER

SUMMARY OF CONTENT

This legislative rule provides assessors with guidelines to assure uniform assessment practices relating to determining whether property is exempt from ad valorem property taxation.

CIRCUMSTANCES REQUIRING RULE

State ex rel. Cook v. Rose, 299 S.E.2d 3 (W. Va. 1982), requires the State Tax Commissioner to issue clear and specific regulations and guidelines to assist assessors in determining questions of exemption from ad valorem property taxation. This rule carries out that requirement.

AGENCY APPROVED
WEST VIRGINIA LEGISLATIVE REGULATIONS
STATE TAX DEPARTMENT
TITLE 110
SERIES 3
1986

Filed: July 1, 1988

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§ 110-3-1. General.

1.1 Type of Regulation. - These legislative regulations are a "legislative rule" as defined in W. Va. Code § 29A-1-2(d) (1982).

1.2 Scope. - These legislative regulations provide guidelines to clarify and explain state law as it relates to exemption of property from ad valorem property taxes under W. Va. Code § 11-3-9.

1.3 Authority. - These legislative regulations are issued under the authority of W. Va. Code §§ 11-3-9 and 29A-3-1 et seq.

1.4 Filing Date. - These legislative regulations were first filed as proposed legislative regulations in the State Register on December 5, 1986. A public comment period was held until 5:00 p.m. on January 30, 1987. These regulations were refiled as emergency legislative regulations in the State Register on July 1, 1988; a public comment period commenced at that time and continued until 5:00 p.m. on July 31, 1988. The emergency status of the regulation was withdrawn August 11, 1988. The regulations were filed as agency approved regulations in the State Register and with the Legislative Rule-Making Review Committee on September 16, 1988.

1.5 Effective Date. - These legislative regulations become effective upon being approved by the Legislature.

1.6 Citation. - These regulations may be cited as: 110 C.S.R. 3, § ___ (1988).

§ 110-3-2. Definitions. - As used in this rule and unless the context requires a different meaning, the following terms shall have the meanings ascribed herein, and shall apply in the singular or in the plural.

2.1 The term "academy" means a private secondary or college preparatory school, a school for special instruction or a specified society of scholars or artists.

2.2 The term "aged" means over the age of sixty-five years.

2.3 The term "bank deposits" as used in these regulations shall mean a deposit of money with any person engaged in the business of banking. It

includes money on deposit in a checking, time, interest or savings account, and certificates of deposit (including money market certificates and All Savers Certificates). The term "person engaged in the business of banking" means and includes banks, building and loan associations, industrial banks, industrial loan companies, supervised lenders, credit unions and all other similar institutions, whether persons, firms or corporations, which are by law under the jurisdiction and supervision of the West Virginia Commissioner of Banking, the Federal Reserve Board or the United States Comptroller of the Currency.

2.4 The term "benevolent association or society" means a society or association having a philanthropic or charitable purpose and intended to confer benefits to the general public or a specific section of the public at large rather than to produce profit or gain.

2.5 The term "blind" means a person whose central visual acuity does not exceed twenty-two hundred in the better eye with correcting lenses, or if his visual acuity is greater than twenty-two hundred but is occasioned by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

2.6 The term "bond" means a certificate or evidence of debt on which the issuing church or religious society promises to pay to the bond holders a specified amount of interest for a specified length of time, and to repay the loan on the expiration date. In every case a bond represents a debt. Commonly, bonds are secured by a mortgage or lien on specific property. The term "bonds" includes annuity bonds, bearer bonds, callable bonds, chattel mortgage bonds, collateral trust bonds, convertible bonds, corporate bonds, coupon bonds, debenture bonds, general mortgage bonds, general obligation bonds, guaranteed bonds, improvement bonds, income bonds and supportment bonds.

2.7 The term "cash" as used in these regulations shall mean and include all United States and foreign currency.

2.8 The term "cemetery" as used in these regulations, shall mean a place where the dead bodies of human beings are buried; it is a place or area of ground set apart for the burial of the dead, and includes not only lots for depositing the bodies of the dead, but also such avenues, walks, and grounds as may be necessary for its use or for ornamental purposes. In Re Hillcrest Memorial Gardens, Inc., 146 W. Va. 337, 119 S.E.2d 753 (1961).

2.9 The term "charitable" means of, or for, charity.

2.10 The term "charity" means a gift to be applied consistently with the existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or

works, or otherwise lessening the burdens of government. It is immaterial whether the purpose is called charitable in the gift itself if it is so described as to show that it is charitable. Any gift not inconsistent with existing laws which is promotive of science or tends to the education, enlightenment, benefit or amelioration of the condition of mankind or the diffusion of useful knowledge, or is for the public convenience is a charity.

2.11 The term "child" means any person under eighteen years of age.

2.12 The term "church," as used in the regulations, shall refer to an individual parish, congregation or like subgroup of an organized religion, denomination, sect or religious society which is exempt from federal income taxes under 26 U.S.C. §§ 501(c)(3) or (c)(4).

2.13 The term "club room" means a place used by a voluntary, incorporated or unincorporated club or association of person which is officially approved by the college or university and which has a membership consisting primarily of students or faculty members or both, and which meets for social, literary, educational, or scientific purposes, or other purposes of like nature.

2.14 The term "college" means and includes any "State college of university" or "community college" as defined in W. Va. Code § 18-26-2; and any other institution of higher education which has approval from the West Virginia Board of Regents to award degrees of higher educational status pursuant to W. Va. Code § 18-26-13a. The term "higher educational institution" means any institution as defined by section 401(g, (g) or (h) of the Federal Higher Education Facilities Act of 1963, as amended, and includes the private proprietary educational institution operated for profit which offers one or more programs leading to a degree. See W. Va. Code § 18-26-3(g).

2.15 The term "dead victuals" means all non-living edible foodstuffs, beverages containing no alcohol and other non-living items commonly thought of as food intended entirely for human consumption, including, by way of illustration and not limitation, cereals and cereal products, meat and meat products, fish and fish products, poultry and poultry products, fresh and salt water animal products, egg and egg products, vegetables and vegetable products, fruit and fruit products, flour and flour products, sugar and sugar products, milk and milk products, cocoa and cocoa products, coffee and coffee substitutes, tea, herbs, spices, salt and salt substitutes, condiments, candy and confections, soft drinks, soft drink mixes and syrups, tenderizers, food coloring, bottled drinking water, sugar substitutes, oleo margarine, shortening, gelatins, baking and cooking ingredients, mushrooms, spreads, relishes, desserts, flavorings, chewing gum, edible seeds, nuts and berries. This term does not include medicines, vitamins and dietary supplements whether in liquid, powered, granular, tablet, capsule, lozenge, or pill form spirituous, malt or venous liquors or beer, or tobacco or tobacco products.

2.16 The term "deaf" means having a hearing impairment of such severity as to substantially interfere with the capacity to learn in a normal traditional classroom setting, or the capacity to obtain gainful employment.

2.17 The term "debenture" means a bond or promissory note backed by the general credit of the issuer usually not secured by a mortgage or lien on any specific property, subject to the following variations:

2.17.1 Convertible debenture. - A debenture which may be changed or converted into some other security usually at the option of the holder.

2.17.2 Convertible subordinate debenture. - A debenture which is subject or subordinate to prior payment of other indebtedness but which may be converted into another form of security.

2.17.3 Sinking fund debenture. - A debenture which is secured by periodic payments into a sinking fund, commonly managed by a trustee for purposes of retiring such debt.

2.17.4 Subordinate debenture. - A debenture which is subject to or subordinate to prior payment of other indebtedness.

2.18 The term "dormitory" means a place used by students as sleeping quarters or living quarters.

2.19 The term "dumb" means lacking the power of speech or having such impairment of the power of speech as to substantially interfere with the capacity to learn in a normal traditional classroom setting, or the capacity to obtain gainful employment.

2.20 The term "education" means the process of teaching or developing the knowledge, skill or character of persons, especially by formal schooling. "Education" does not include programs designed to train animals.

2.21 The term "evidence of debt" means a written instrument entered into by two or more parties whereby one party acknowledges in writing a debt of money as owing or payable to another party.

2.22 The term "fraternal association or society" means an association or society of persons, often sharing a similar or the same calling, avocation, or profession, formed for mutual aid and benefit, or a common cause and operated on a not-for-profit basis.

2.23 The term "free school" means a school included in the system of public schools required by W. Va. Const. Art. XII, § 1, but does not include higher education.

2.24 The term "friendless" means those persons without workable family or other human support such as to be in need of housing, care or feeding, and unable to obtain or provide such housing, care or feeding for themselves.

2.25 The term "health care corporation" as use in these regulations shall refer to any corporation organized and licensed under the provisions of W. Va. Code § 33-25-1 et seq.

2.26 The term "home for children" means an orphan asylum as defined under Section 2.42 of these regulations.

2.27 The term "house of refuge" means a place operated for the purpose of providing shelter, protection, safety or escape from danger, distress or persecution.

2.28 The term "household goods," as used in these regulations, shall refer only to tangible personal property commonly found within the house and items used to care for the house and its surrounding property.

2.29 The term "hospital" means an institution which is primarily engaged in providing to in-patients, by or under the supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled or sick persons, or rehabilitation services for the rehabilitation of injured, disabled or sick persons and which is either licensed by the West Virginia Department of Health as a hospital, or operated by the federal government or the state government as a hospital. This term also includes psychiatric and tuberculosis hospitals. See W. Va. Code § 16-2D-2(t).

2.30 The terms "hospital service corporation," "medical service corporation," "dental service corporation" and "health service corporation" as used in these regulations shall be defined as they are defined in W. Va. Code § 33-24-2.

2.31 The term "immediate use" is use which is direct and not separated in time, relationship or connection.

2.32 The term "infirm" means persons who are so weak, frail, ill, feeble or unstable as to be unable to house, care for or feed themselves or obtain such housing, care or feeding for themselves.

2.33 The term "lease" means to rent out or contractually give the use of a property in return for a monetary or other remuneration.

2.34 The term "library" means a place where books, manuscripts, films, tapes, records, musical scores, or other literary, scientific or artistic writings or materials are kept for use but not for sale.

2.35 The term "literary" means of, relating to, or having the characteristics of letters, humane learning or literature.

2.36 The term "literary hall" means a place regularly used as a library or for reading, writing or instruction in literature or literary subject matter.

2.37 The term "livestock" means farm animals or farm fowl raised for profit. Livestock shall not include cats, rabbits, dogs, rats, mice, raccoons, groundhogs, deer, squirrels, crows, bears, exotic animals, parrots, parakeets, swans, peafowl, tropical or wild or exotic birds or fish or any animal commonly kept as, or thought of as a pet, or any game animal or wild animal, so long as such animal or fowl is not kept or raised for profit.

2.38 The term "lunatic asylum" means an institution for the housing, care, feeding and treatment of the insane on a long-term residential basis.

2.39 The term "money" as used in these regulations shall mean and include cash, personal and business checks, cashiers' checks and express checks, bank credit cards (MasterCard, VISA, etc.) sales drafts or sales slips held by a merchant or other party for deposit with a bank, and other items commonly though of and understood to be money. It does not include notes, bonds, bills and accounts receivable, stock and any other similar intangible personal property. See 48 Op. Att'y. Gen. 63 (1959).

2.40 The term "non-profit" and the term "not-for-profit" mean used with a view to producing no profit on total aggregate operations other than that which is used or held for current or planned future use in furtherance of the charitable purposes of the organization. Charities and others operating property not used for profit are not precluded from exacting charges upon beneficiaries for services rendered, nor are they precluded from deriving profits from total aggragate operations or from individual beneficiaries on a case by case basis so long as total aggregate annual operations produce no significant economic benefit or inurement to private individuals or entities apart from those which are necessarily incorporated into the operation of the charitable activity.

2.41 The term "notes" means and includes any writing signed on behalf of a church or religious society, containing an unconditional promise to pay a sum certain in money, on demand or at a definite time,. The term "note" does not include money, documents of title or investment securities.

2.42 The term "orphan asylum" means an institution for the housing, care, and feeding of children whose parents are dead, or who are unwanted, rejected, judicially removed from family, abused or otherwise unable to obtain housing, care or feeding in a workable family or adoptive relationship.

2.43 The term "parsonage" means the house, houses or living quarters which

are provided by a church for its pastor, or pastors.

2.44 The term "pastor" means a minister, priest, rabbi, clergyman, or other recognized religious leader who has charge of a congregation, parish or like following.

2.45 The term "person" means the State and its political subdivisions, and any individual, firm, partnership, joint venture, joint stock company, the United States and its agencies, public or private corporation, municipal corporation, cooperative, estate, trust, business trust, receiver, executor, administrator, any other fiduciary, any representative appointed by order of any court or otherwise acting on behalf of others, or any other group or combination acting as a unit, and the plural as well as the singular number.

2.46 The term "personal effects" means articles and items of personal property commonly worn on or about the human body, or carried by a person and normally thought to be associated with the person. "Personal effects" includes firearms and ammunition held for personal use and not for profit.

2.47 The term "place of divine worship," as used in these regulations shall refer to a church, synagogue, temple or other meeting place in which any religion, denomination, sect or religious society congregates to engage in the worship of that religion's, denomination's, sect's or religious society's deity or deities.

2.48 The term "primary use" is use which is chief, main or principal.

2.48.1 Whenever property is required to be "used" for stated purposes in order to qualify for exemption under W. Va. Code § 11-3-9, the stated purpose must be the primary or immediate use of the property, and not a secondary or remote use. The property may be used for purposes which are ancillary to the stated purpose, but the ancillary use must further the stated, primary use.

2.48.2 Whenever property is required to be "used exclusively" for stated purposes in order to qualify for exemption under West Virginia Code § 11-3-9, the stated purposes must be the primary and immediate use, and not a secondary or remote use. The property may <u>not</u> be used for purposes which are ancillary to the stated purpose.

2.49 The term "property belonging exclusively to" shall refer to property in which the stated owner is the person who is possessed of the freehold, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust securing a debt or liability shall be deemed the owner until the mortgagee or trustee takes possession, after which such mortgagee or trustee shall be deemed the owner. A person who has an equitable estate of freehold, or is a purchaser of a freehold estate who is in possession before

transfer of legal title shall also be deemed to be property belonging exclusively to the beneficial owner.

2.50 The term "property belonging to" shall refer to real property in which the person, association, corporation, or other legal entity entitled to the exemption has the fee interest, or any type of reversionary interest when the present possessory interest is in another, or the current possessor of the property is a lessee of the exempt person, association, corporation or entity. This term shall refer to personal property in which the person, association, corporation or other legal entity entitled to the exemption holds legal title to the property or who is a lessee of the property, or if it has been mortgaged or pledged, the personal property shall be deemed to be the property of the person who has possession.

2.51 The term "property on hand to be used in the subsistence of livestock" means all personal property primarily, actually and directly used for, and reasonably necessary for the care or feeding of livestock. Only personal property is subject to this exemption. Real property is not subject to the exemption authorized by W. Va. Const. Art. X, § 1.

2.52 The term "public" means for the use or benefit of the people in general.

2.53 The term "real property" includes lands, tenements and hereditaments, all rights thereto and interest therein except chattel interest, and includes the buildings or structures erected thereon unless such buildings or structures are owned by another. See W. Va. Code §§ 11-4-10 and 2-2-10(p).

2.54 The term "relief society or association" means a society or association of persons typically sharing the same or similar calling or employed in a single industry or by a single employer and formed for the purpose of establishing a worker's relief fund serviced by periodic contributions from members or jointly from members and employers for the purpose of providing relief to members and their families in the event of work related injury or death.

2.55 The term "scientific" means of, relating to, or exhibiting the methods or principles of natural science, or knowledge covering the operation of natural laws, especially as obtained and tested through the scientific method: for example, physics, chemistry, or biology.

2.56 The term "seminary" means an institution of secondary or higher education ordinarily for the training of candidates for the priesthood, ministry, or rabbinate.

2.57 The term "Tax Commissioner" or "Commissioner" shall mean the Tax Commissioner of the State of West Virginia or his delegate.

2.58 The term "tenant" means the one who has the temporary use and occupation of real property owned by another person (called the landlord) the duration and terms of such temporary use or occupation being fixed by an instrument called a lease.

§ 110-3-3. Constitutional Authority.

3.1 West Virginia Constitution article X, § 1 mandates that ad valorem property taxation shall be equal and uniform throughout this State. It then empowers the Legislature to, by general law, exempt the following property:

3.1.1 Property used for educational, literary, scientific, religious or charitable purposes;

3.1.2 All cemeteries;

3.1.3 Public property;

3.1.4 Personal property, including livestock, employed exclusively in agriculture, including horticulture and grazing; and

3.1.5 Products of agriculture, including horticulture, and grazing, while owned by the producers thereof.

3.2 West Virginia Constitution article X, § 1 exempts household goods to the value of two hundred dollars from ad valorem property taxes.

3.3 West Virginia Constitution article X, § 1a provides the following exemptions from ad valorem property taxation:

3.3.1 Household goods, if not held or used for profit;

3.3.2 Personal effects, if not held or used for profit;

3.3.3 Bank deposits and money; and

3.3.4 Upon implementation of the first statewide reappraisal accomplished in accordance with W. Va. Const. Art. X, § 1b, all intangible personal property shall be exempt from ad valorem property taxation unless and until the Legislature subjects by class, group or type such intangible personal property to such taxation.

3.3.4.a If intangibles are once again subjected to ad valorem property taxation, the applicable levy rate is the Class I levy rate for the county and levying body within whose jurisdiction the intangible has its situs.

3.3.4.b If after the reappraisal is implemented, the Legislature decides to tax intangible personal property, the intangible personal property subject to ad valorem property taxation shall not include money, bank deposits or other investments determined by the Legislature to be in the nature of deposits in a bank or other financial institution, or upon pensions, monies or investments determined by the Legislature to be in lieu of or otherwise in the nature of pensions.

3.3.5 The value of all tangible and intangible property subject to ad valorem property taxation and which was acquired or created subsequent to any statewide reappraisal shall be allocated and phased-in over a period of years in the same manner as property valued during the statewide reappraisal.

3.4 West Virginia Constitution Article X, § 1b provides the following:

3.4.1 Until such time as the statewide reappraisal is implemented, current statutory law governing assessments remain in effect. As a result, the assessed value of utility property is whatever the Board of Public Works determines, and the assessed value of all other property cannot be less than sixty percent nor more than one hundred percent, by class, of the Tax Commissioner's appraised value of property in each county. Upon implementation of the statewide reappraisal, all property subject to ad valorem property taxation shall be assessed at sixty percent of its appraised value. The Legislature may, by general law agreed to by two-thirds of the members elected to each house, establish a higher percentage but such percentage shall not be more than one hundred percent of appraised value. Therefore, a maximum of forty percent of the value of all such property is exempt from ad valorem property taxation.

3.4.2 The first twenty thousand dollars of assessed valuation of any real property, or of personal property in the form of a mobile home, used exclusively for residential purposes and occupied by the owner or one of the owners thereof as his residence who is a citizen of this state and who is sixty-five years of age or older or is permanently and totally disabled as that term may be defined by the Legislature, shall be exempt from ad valorem property taxation, subject to such requirements, limitations and conditions as shall be prescribed by general law.

3.5 West Virginia Constitution Article X, § 1b permits the Legislature to provide by general law as follows:

3.5.1 "[A]n amount not to exceed twenty thousand dollars of value of any real property, or of personal property in the form of a mobile home, used exclusively for residential purposes and occupied by the owner or one of the owners thereof as his residence who is a citizen of this state, and who is under sixty-five years of age and not totally and permanently disabled" may by general law be exempted from ad valorem property taxes.

3.5.2 In no event shall any one person and his spouse, or one homestead be entitled to more than one exemption.

3.6 West Virginia Constitution article X, § 1c provides provides the following:

3.6.1 Tangible personal property which is moving in interstate commerce through or over West Virginia, or which was consigned from a point of origin outside of West Virginia to a public or private warehouse in this State for storage in transit to a final destination outside this State shall be exempt from ad valorem property taxation; Provided, That such out-of-state destination is specified in time to allow for a determination of exempt status in accordance with W. Va. Code § 11-3-1 et seq.

3.6.2 The exemption shall be allowed if the property, while in the warehouse, is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled, or repackaged for out-of-state delivery so long as the activity does not result in a new or different article, product, substance or commodity, or one of different utility.

3.6.3 Personal property of inventories of natural resources shall not be exempt from ad valorem property taxation unless such exemption is required by paramount federal law.

§ 110-3-4. Statutory Exemptions From Ad Valorem Property Taxes.

4.1 Exemptions provided by W. Va. Code § 11-3-9. - Section 11-3-9 of the West Virginia Code exempts specific property from ad valorem property taxation, pursuant to the grant of authority in W. Va. Const. Art. X, § 1. It therefore is necessary that each exemption provided in W. Va. Code § 11-3-9 be authorized by the West Virgina Constitution. This list of exemptions includes the following property:

4.1.1 Property belonging to the United States, other than property permitted by the United States to be taxed under state law.

4.1.2 Property belonging exclusively to the State of West Virginia.

4.1.3 Property belonging exclusively to any county, district, city, village or town of the State of West Virginia, and used for public purposes.

4.1.4 Property located in this State belonging to any city, town, village, county or any other political subdivision of another state, and used for public purposes.

4.1.5 Property used exclusively for divine worship.

4.1.6 Parsonages, and the household goods and furniture pertaining thereto.

4.1.7 Mortgages, bonds and other evidences of indebtedness in the hands of bona fide owners and holders and issued and sold by churches and religious societies for the purpose of securing money to be used in the erection of church buildings used exclusively for divine worship, or for the purpose of paying indebtedness thereon.

4.1.8 Cemeteries.

4.1.9 Property belonging to or held in trust for, colleges, seminaries, academies and free schools, if used for educational, literary or scientific purposes, including books, apparatus, annuities and furniture.

4.1.10 Property belonging to, or held in trust for, colleges or universities located in West Virginia, or any public or private nonprofit foundation or corporation which receives contributions exclusively for such college or university, if the property or dividends, interest, rents or royalties derived therefrom are used or devoted to educational purposes of such college or university.

4.1.11 Public and family libraries.

4.1.12 Property used for charitable purposes, and not held or leased out for profit.

4.1.13 Property used for the public purposes of distributing water or providing sewer services by a duly chartered nonprofit corporation when such property is not held, leased out, or used for profit.

4.1.14 Property used for area economic development purposes by nonprofit corporations when such property is not leased or held out for profit.

4.1.15 All real estate not exceeding one half acre in extent, and the buildings thereon, used exclusively by any college or university society as a literary hall, or as a dormitory or club room, if not leased or otherwise used with a view to profit.

4.1.16 All property of benevolent associations, not conducted for private profit.

4.1.17 Property belonging to any public institution for the education of the deaf, dumb or blind.

4.1.18 Property belonging to any hospital not held or leased out for profit.

4.1.19 House or refuge, lunatic or orphan asylum.

4.1.20 Homes for children or for the aged, friendless or infirm, not conducted for private profit.

4.1.21 Fire engines and implements for extinguishing fires, and property used exclusively for the safekeeping thereof, and for the meeting of fire companies.

4.1.22 All property on hand to be used in the subsistence of livestock on hand at the commencement of the assessment year.

4.1.23 Household goods to the value of $200, whether or not used for profit.

4.1.24 Bank deposits and money.

4.1.25 Household goods, when not held or used for profit.

4.1.26 Personal effects when not held or used for profit.

4.1.27 Dead victuals laid away for family use.

4.1.28 Any other property or security exempted by any other provision of state or federal law.

4.2 Limitations on exemptions. - The exemptions listed in Subsection (a) of this Section are subject to three limitations:

4.2.1 No property shall be exempt from taxation if it was purchased or procured for the purpose of evading ad valorem property taxes. W. Va. Code § 11-3-9.

4.2.2 The language of W. Va. Code § 11-3-9 shall not be construed to exempt from taxation any property owned by or held in trust for, educational, literary, scientific, religious or other charitable corporations or organizations, including any public or private nonprofit foundation or corporation existing for the support of any college or university located in West Virginia, unless such property, or the dividends, interest, rents or royalties derived therefrom, is used primarily and immediately for the purposes of such corporations or organizations.

4.2.3 Exemption shall be allowed only in conformity with these

regulations which are issued to provide assessors with guidelines to ensure uniform assessment practices statewide to effect the intent of W. Va. Code § 11-3-9.

4.3 Split-listing of property.

4.3.1 Split-listing of property, as authorized by W. Va. Code §§ 11-4-2 and 11-4-3, is only applicable in those instances where property is partially used by the owner thereof exclusively for residential purposes and partially used for exempt purposes.

§ 110-3-5. Ruling By The County Assessor.

5.1 All property, real or personal, exempt or nonexempt must be returned to the assessor and annually assessed. W. Va. Code §§ 11-3-1 and 11-3-2.

5.2 The assessor shall begin the work of assessment on July 1 of each year and by the following January 31 shall complete such work and complete entering all information in the land and personal property books.

5.2.1 The assessor shall obtain from each person in the county who is liable to assessment a full and correct listing of the description of all personal property of which he was the owner or the person in possession on July 1 of the current year. The listing shall include what the taxpayer deems to be the true and correct value of each item of personal property.

5.2.2 The assessor shall also obtain from each person a separate but equally complete listing of all property, real and personal, which is held, possessed or controlled by him as executor, administrator, guardian, trustee, receiver, agent, partner, attorney, president or accounting officer of a corporation, consignee, broker, or in any representative or fiduciary character.

5.3 The list required by the foregoing Section 5.2 and by W. Va. Code § 11-3-2 shall be made and information furnished by the following:

5.3.1 With respect to property of a minor, by his guardian, if he has one, and if he has none, by his father, if living, or, if not, by his mother, if living, and if neither be living or a resident of this State, by the person having charge of the property;

5.3.2 With respect to the separate property of a married woman, by herself or her husband in her name;

5.3.3 With respect to the property of a husband, who is out of the State or incapable of listing such property, by his wife;

5.3.4 With respect to the property held in trust, by the trustee,

if in possession thereof, otherwise by the party for whose benefit it is held;

5.3.5 With respect to personal property of a deceased person, by the personal representative;

5.3.6 With respect to the property of an insane person, or a person sentenced to confinement in the penitentiary, by his committee;

5.3.7 With respect to the property of a company, whether incorporated or not, whose assets are in the hands of an agent, factor or receiver, by such agent, factor or receiver, otherwise by the president or property accounting officer, partner or agent within the State;

5.3.8 With respect to credits or investments, in the possession or under the charge of a receiver or commissioner, by such receiver or commissioner; and,

5.3.9 With respect to shares in a banking institution or national banking association, by the cashier, secretary or principal accounting officer of such banking institution or national banking association.

5.4 All real property, even if exempt, shall be entered upon the assessor's books, together with the true and actual value thereof, but no taxes shall be levied upon such exempt real property or extended upon the assessor's books. Failure to enter real property on the land books may result in forfeiture of such property. W. Va. Const. Art. XIII, § 6.

5.5 The assessor shall complete his assessment and make up his official copy of the land and property books in time to submit the same to the Board of Equalization and Review not later than February 1 of the assessment year.

5.6 Any issue relating to the description or value of real or personal property shall be determined by the county commission sitting as a Board of Equalization and Review. W. Va. Code § 11-3-24.

5.7 Any time after property has been returned for taxation and up to and including the time the property books are before the county commission for equalization and review, and if a taxpayer disagrees with the classification of property assessed to him, or believes that the property is exempt or not otherwise subject to taxation, he shall file his objections, in writing, with the assessor. W. Va. Code § 11-3-24a.

5.8 If the assessor sustains the taxpayer's objections, he must make the necessary corrections in the property books. W. Va. Code § 11-3-24a.

5.9 If the assessor does not agree with the taxpayer's objections he must state his reasons for doing so to the taxpayer. If the taxpayer requests, the

assessor must put his reasons in writing and furnish them to the taxpayer. W. Va. Code § 11-3-24a.

5.10 The assessor may certify the question to the Tax Commissioner. If the taxpayer requests, the assessor must certify the question to the State Tax Commissioner. W. Va. Code § 11-3-24a.

5.11 If the Tax Commissioner disagrees with the decision of the assessor as to the assessment of any property on the property books, the Tax Commissioner may appear before the county commission and contest the decision.

§ 110-3.6. Tax Commissioner's Ruling.

6.1 Information provided by the assessor. - The assessor must furnish the following information to the State Tax Commissioner.

6.1.1 The legal description of the property as it is listed in the land books.

6.1.2 A written statement setting forth his reasons why the taxpayer's claim was denied. The reasons of the assessor must be particular, e.g., "the property is used for the sale of merchandise," not general; e.g., "the property is not used for charitable purposes."

6.1.3 A statement of all uses of the property of which he is aware. This list of uses shall include all sporadic, temporary, seasonal or part-time uses; any use which involves only a part of the property; and any use by an individual, corporation, association or entity that is not the owner of record.

6.1.4 All information furnished by the assessor must be in the form of an affidavit. W. Va. Code § 11-3-24a. Any information not sworn to will be presumed to be false unless substantiated by the taxpayer.

6.2 Information provided by the taxpayer. - The taxpayer must furnish the following information to the State Tax Commissioner.

6.2.1 A description of the property which is the subject of the ruling.

6.2.2 The reason why the taxpayer believes the property to be exempt from taxation or erroneously classified. This shall include the particular statutory exemption(s) enumerated in W. Va. Code § 11-3-9. A statement such as "religious use" is not sufficient. The statutory exemption must be set forth with particularity, e.g., "property used exclusively for divine worship." See W. Va. Code § 11-3-9.

6.2.3 A statement of all uses of the property. This statement

shall include any use that is temporary, seasonal, sporadic or part-time; any use that involves only part of the property; and any use by an individual, corporation, association or entity that is not the owner of record.

6.2.3.1 When any use is not a full-time use of the property, the taxpayer must state how often the property is put to that particular use, and must state the method used to determine how that portion of the use was determined.

6.2.3.2 When part of the property is put to one use and part is put to another use, the taxpayer must state what part of the property is put to each use, and must provide the area of the property that is put to each use.

6.2.3.3 When two different individuals, corporations, associations or entities use the property, the taxpayer must state the use to which each is putting the property. The taxpayer must also state what interest each has in the property, i.e., life estate, leasehold, etc.

6.2.4 The taxpayer must provide a copy of the written statement which was filed with the assessor.

6.2.5 All information filed by the taxpayer must be in affidavit form, or incorporated by reference into the affidavit and shall have attached thereto the form provided by the Tax Commissioner, such form being completed in full by the taxpayer. W. Va. Code § 11-3-24a. Any information not sworn to will be presumed to be false unless substantiated by the assessor.

6.2.6 The Tax Commissioner if he deems it pertinent, may request additional information in order to render an appropriate determination. For example, in order to determine whether a home for the elderly or handicapped qualified for exemption, the following information should be provided.

6.2.6.1 A copy of the articles of incorporation of the corporation which owns the property and, if different from the owner the same documents from the corporation which operates and manages the property, including any amendments or proposed amendments thereto.

6.2.6.2 A copy of the bylaws of said corporation(s), including any amendments or proposed amendments thereto.

6.2.6.3 A statement evidencing the nonprofit corporation's ties to the community and support from local community groups.

6.2.6.4 A statement as to whether any officer or director does or will receive any compensation from the nonprofit corporation for his or her services. If compensation is or will be received, describe the amount and the basis thereof.

6.2.6.5 A statement as to whether any officer or director has any financial interest in any contract with the nonprofit corporation, or in any firm or corporation which has a contract with the nonprofit corporation. If such exists, it must be fully described.

6.2.6.6 As statement as to when the property was placed in use, the status of the property and the number, if any, of residents as of July 1 of the year during which application for exemption was submitted. Additionally, what will be the total number or residents in the property?

6.2.6.7 Copies of balance sheets and statements of income and expense for each of the last three (3) fiscal years that the nonprofit corporation has been in existence.

6.2.6.8 Copies of balance sheets and statements of income and expense for each of the last three (3) fiscal years, for the parcel(s) or item(s) from which exemption from ad valorem property taxes is requested.

6.2.6.9 A narrative description of how construction and operation of the facility is financed, including for example: (a) whether a federal loan was obtained under 12 U.S.C. § 1701; (b) the source of start-up funds; and (c) who will pay for operating deficits.

6.2.6.10 A narrative describing the facilities, including: (a) number and types of structures; (b) number of stories; (c) number of units by size (number of bedrooms); (d) special amenities or features of the units; (e) number of units with such features; (f) dining rooms; (g) health and physical therapy facilities; (h) community rooms or buildings; (i) recreational facilities; (j) workshops; and (k) any other essential service facility.

6.2.6.11 Does the project provide any services to the occupants such as health care, continuing education, welfare information, recreational, homemaker, and counseling services, referral services, and transportation? If yes, please describe each service and indicate whether or not a charge is made for the service, whether it be separately stated or included in the monthly rental charge to the occupants. Additionally, if a charge is made, how is it determined; i.e., on a profit basis, to recover cost or at less than cost, and whether the charge is based on providing the service at the lowest feasible cost to the occupants.

6.2.6.12 A narrative description of the occupancy of the facility (elderly and/or handicapped, including physically handicapped or developmentally disabled, i.e., mentally retarded, cerebral palsy, or epilepsy).

6.2.6.13 What are the criteria, if any, which an eligible tenant must meet?

6.2.6.14 Are the apartments furnished or unfurnished?

6.2.6.15 What is the monthly rental charge for the different apartments? How is it determined and how does it compare to rental charges for similar public apartments in the surrounding community?

6.2.6.16 The number of units for which Section 8 Housing Assistance Payments are made by the Federal government, and the number of units for which no such assistance is received.

6.2.6.17 Do residents separately pay for electricity, cable television, telephone or other utilities?

6.2.6.18 Will any residents be accepted without paying rent and, if so, how many and what are the distinguishing criteria?

6.2.6.19 Will residents be evicted if they are unable to pay their monthly rental or pay for services?

6.2.6.20 Is any portion of the facility leased to another for use in business? If yes, then describe the portion so leased, the annual rental and identify the lessee.

6.3 Information submission date. - All information should be mailed in such a manner so as to allow the Tax Commissioner sufficient time to provide a ruling. It is recommended that all information be mailed to the Tax Commissioner by January 31 of the assessment year.

6.4 Tax Commissioner ruling issuance date. - The Tax Commissioner shall issue his ruling on or before February 28 of the assessment year. W. Va. Code § 11-3-24a.

§ 110-3-7. Appeal.

7.1 Assessor or taxpayer appeal. - The ruling of the Tax Commissioner shall be binding on both the assessor and the taxpayer unless either shall appeal the decision to the circuit court of the county in which the assessment is issued, such appeal to be filed within thirty (30) days after adjournment sine die of the county commission sitting as a Board of Equalization and Review. W. Va. Code §§ 11-3-24a and 11-3-25.

7.2 Tax Commissioner appeal. - In any case in which the Tax Commissioner has appeared before the county commission and contested the assessment of any property on the property books in any county and the county commission has upheld the decision of the assessor, the Tax Commissioner may appeal such county commission determination to the circuit court of the county in which the

assessment is issued, such appeal to be filed within thirty (30) days after adjournment sine die of the county commission sitting as a board of equalization and review.

7.3 Notice to the State Tax Commissioner. - Upon appeal by either the taxpayer or the assessor, the prosecuting attorney of the county who would represent the interest of the state, county and district shall be given at least ten (10) days notice prior to a hearing on the matter. The prosecuting attorney shall provide no less than five (5) days notice to the Tax Commissioner.

§ 110-3-8. Property Belonging To The United States.

8.1 All real and personal property belonging to the United States of America, other than property permitted by the United States to be taxed under state law, is exempt from ad valorem property taxation.

8.2 This exemption applies to public corporations and other agencies created by the federal government for executing national objects and purposes, so long as exemption is provided in the legislation establishing the federal agency or public corporation.

8.3 This exemption does not extend to a private corporation employed by the government.

8.4 Congress may exempt private corporations from taxation which will prevent or impede services which such private corporations provide but such exemption must be specifically stated by Congress in legislation. Absent such legislation, no exemption may be claimed.

8.5 Federal lands sold to private persons with title retained by the government to secure future payments of the purchase money remain exempt so long as the government's lien remains unsatisfied.

8.6 Property owned by private persons but leased to or used by the federal government is not exempt to the owner.

8.7 The leasehold interest in property belonging to the United States and which is owned by a private or otherwise nonpublic entity is not exempt from ad valorem property taxation.

§ 110-3-9. Property Belonging Exclusively To The State.

9.1 All real and personal property belonging exclusively to the State of West Virginia is exempt from ad valorem property taxation.

9.2 This exemption does not extend to private persons employed by the State.

§ 110-3-10. Property Belonging Exclusively To Any County, District, City, Village Or Town In This State And Used For Public Purposes.

10.1 All real and personal property belonging exclusively to any county, district, city, village or town in the State of West Virginia and used for public purposes is exempt from ad valorem property taxation.

10.2 Property belonging exclusively to any county, district, city, village or town in this State which is rented or leased to a private or nonpublic entity is not being used for public purposes and therefore is subject to ad valorem property taxation.

10.3 The exemptions set forth in Section 13-2C-15 of the West Virginia Code relating to bonds issued under the Industrial Development and Commercial Development Bond Act shall apply as set forth in Section 35.16 of these regulations.

§ 110-3-11. Property Located In This State Belonging To Any City, Town, Village, County Or Other Political Subdivision Of Another State, And Used For Public Purposes.

11.1 Property located in the State of West Virginia belonging to any city, town, village, county or other political subdivision of another State, and used for public purposes is exempt from ad valorem property taxation.

11.2 Property belonging exclusively to any county, district, city, village or town of another state which is rented or leased to a private or nonpublic entity is not being used for public purposes and therefore, is subject to ad valorem property taxation.

§ 110-3-12. Places Of Divine Worship.

12.1 Section 11-3-9 of the West Virginia Code exempts from ad valorem property tax only that property which is used exclusively for divine worship. Property will not be exempt from ad valorem property tax as "property used exclusively for divine worship" if it is used for any other purpose.

12.2 The term "divine worship" as used in these regulations, shall include the following:

12.2.1 Religious services, e.g., regular periodical worship, weddings, funerals.

12.2.2 Educational activities in furtherance of religious knowledge, e.g., Sunday school or Hebrew school classes.

12.2.3 Meetings in furtherance of the religious activities of the religion, sect, denomination or society, e.g., a meeting to decide on a new minister or choir practice.

12.2.4 Any other activity, the sole purpose of which is the furtherance of the religious activities of the religion, sect, denomination or society.

12.3 The term "divine worship," as used in these regulations, shall not include the following:

12.3.1 Activities designed to raise funds, either for the religion, sect, denomination or society, or for an organization associated therewith, e.g., a ladies club rummage sale or a teen club car wash.

12.3.2 Meetings which are not for the sole purpose of furthering the religious activities of the religion, sect, denomination or society, e.g., an organizational meeting of a church league basketball team.

12.3.3 Educational activities not solely in furtherance of religious activities, e.g., church organized driver's education classes.

12.3.4 All other activities, the purposes of which are not solely the furtherance of religious activities.

12.4 Use of property for religious purposes may be, and typically is, a charitable use.

12.5 Property not used exclusively for divine worship will not qualify for exemption under this Section. However, such property may still be exempt if the other activities are such as to qualify under Section 19 of these regulations.

12.5.1 Where a portion of the property is used exclusively for divine worship and the remainder of the property is used for other purposes which are primary and immediate, and are educational, literary, scientific or charitable in nature, the property will be exempt under W. Va. Code § 11-3-9. Example: A church which has the sanctuary on the first floor and a multi-use basement. The fact that the church holds weekly bingo games under the authority of W. Va. Code § 47-20-1 et seq. will not destroy the exemption because: (1) only charitable bingo is legally authorized; (2) only charitable or public service organizations may hold a bingo license; and (3) the net proceeds from charitable bingo may only be used for charitable or public service purposes.

12.5.2 Where a portion of the property is used for divine worship and the remainder is not being used primarily and immediately for purposes which may be classified as exempt purposes under W. Va. Code § 11-3-9, the property is fully and completely taxable like any other taxable property. Example: A church

has its sanctuary on the first floor of the structure and a basement immediately below the sanctuary. As a result of the location and construction of the structure, a portion of the basement is used as a neighborhood coffee shop where food is sold. Due to the fact that the sale of food on a continuing basis and in an on-going business environment is not an exempt purpose, the entire structure is subject to property taxation.

12.6 The trustees of a church, parish or congregation may only own four (4) acres of land in a municipality and sixty (60) acres in a rural area. See W. Va. Code § 35-1-8. Only that portion of the property used exclusively for purposes of divine worship shall be exempt under this Section. This exemption is applicable to the structure used for divine worship with any parking area for vehicles. This may not necessarily include the entire four (4) or sixty (60) acres, and nothing herein shall be construed to sanction split-listings. If a portion of a tract of church property is not used for divine worship, it is necessary for the trustees of the church to apply to the county commission of the county wherein the property is situate for the property to be divided in order that the property not used for the exempt purposes will be taxed according to its use. See W. Va. Code § 11-4-18. If a church holds title to property in excess of that authorized by W. Va. Code § 35-1-8, such title is voidable and only the State may attack such excess holdings.

12.7 Property, a portion of which is used exclusively for divine worship and a portion of which is used for other purposes, is not in total used exclusively for divine worship. In order for that portion used exclusively for divine worship to be exempt from ad valorem property taxation, the owner thereof may by application request the county commission to divide such portion from the remainder of the property; Provided, That the division requested is one which the owner would make for the separate conveyance of portions of the property and in no case may a single structure be divided. See W. Va. Code § 11-4-18. The use of the remaining property will determine its classification.

12.8 Property which while owned by a church is used for non-religious purposes during the week is not exempt. For example, if a church leases or rents for private use parking spots on the church's parking lot during the week, the church would lose the exemption which otherwise would be available if the parking lot was only used by worshipers attending church services.

12.9 Even though W. Va. Code § 35-1-8 restricts the quantity of property which a church may hold, title to property in excess of the stated amounts is not void but is only voidable until the time the State may attach and take the title.

§ 110-3-13. Parsonages, Household Goods And Furniture.

13.1 Parsonages, and the household goods and furniture pertaining thereto, are exempt from ad valorem property taxation.

13.2 In order to qualify for exemption from ad valorem property tax, the parsonage must be owned by the trustees of the church, and must be used as a place of residence by the pastor, priest, bishop, minister, clergyman or other similar leader of the said church.

13.3 In order to qualify for exemption from ad valorem property tax the parsonage must be available to a new pastor upon the termination of the services of the old pastor. Thus, the benefit is to the church, not the individual pastor.

13.4 The household goods must be owned by the church and not by the pastor in order to be exempt under this Section. However, household goods owned by the resident of the parsonage would otherwise be exempt under W. Va. Const. Art. X, § 1a and W. Va. Code § 11-3-9.

13.5 A church, parish or congregation may only own four (4) acres of land in a municipality and sixty (60) acres in a rural area. See W. Va. Code § 35-1-8. Only that portion of property used as a parsonage is exempt under this section from taxation. This will not necessarily include the entire four (4) or sixty (60) acres, and nothing herein shall be construed to sanction split-listings.

13.6 Unless there is a position of Assistant Pastor, or a position similarly titled, and the position is regularly occupied by a qualified person, a church shall be allowed only one (1) exemption for a parsonage.

§ 110-3-14. Mortgages, Bonds, And Other Evidence Of Indebtedness In The Hands Of Bona Fide Owners And Holders Sold By Churches And Religious Societies For The Purpose Of Securing Money To Be Used In The Erection Of Church Buildings Used Exclusively For Divine Worship.

14.1 Mortgages, bonds, and other evidences of indebtedness in the hands of bona fide owners and holders sold by churches and religious societies for the purpose of securing money to be used in the erection of church buildings used exclusively for divine worship, or for the purpose of paying indebtedness thereon, are exempt.

14.2 Upon implementation of the First Statewide Reappraisal of property which is required pursuant to W. Va. Code § 11-1A-1 et seq., no intangible personal property shall be subject to ad valorem property taxes unless such taxation is subsequently provided for by an act of the Legislature. Therefore, the question as to whether the intangible personal property addressed under this section is exempt from ad valorem property tax will become moot at that time.

§ 110-3-15. Cemeteries.

15.1 The Constitution specifically allows the exemption of cemeteries. W. Va. Constitution, art. X, § 1.

15.2 The Legislature has specifically exempted cemeteries from ad valorem property tax. W. Va. Code § 11-3-9.

15.3 Land which has been acquired of future use as gravesites is exempt from ad valorem property tax. The exemption is predicated on good faith and the quantity of property must not be disproportionate to the size of the community to be serviced. Mountain View Cemetery v. Massey, 109 W. Va. 473 155 S.E. 547 (1930).

15.4 Property belonging to a cemetery is not a cemetery. Therefore, property belonging to a cemetery is not exempt for ad valorem property tax purposes. In Re Hillcrest Memorial Gardens, Inc., 146 W. Va. 337, 119 S.E.2d 753 (1961). Property belonging to a cemetery shall include, but not be limited to the following:

15.4.1 Office furniture and equipment used for business purposes.

15.4.2 Notes or accounts receivable representing proceeds of the sale of burial lots in such cemetery.

15.4.3 Real estate held by the cemetery which is not being used, or may not reasonably be used, for actual burial plots, except real estate occupied by property specified in paragraph 15.5.

15.4.4 Office buildings, storage buildings, chapels and other buildings, parking lots, and roads owned by the cemetery.

15.5 Property which can be classified as "cemetery" is property wherein a deceased person's remains are permanently buried or otherwise permanently interred, tombstones, and those access roads which directly service such property. Such properties are exempt.

15.6 Family owned cemeteries are exempt from ad valorem property tax. However, when a family cemetery is part of a larger parcel of property, the parcel shall not be exempt from tax unless the primary and immediate use of the parcel, as a whole, is as a cemetery.

§ 110-3-16. Property Belonging To, Or Held In Trust For, Colleges, Seminaries, Academies And Free Schools, If Used For Educational, Literary Or Scientific Purposes, Including Books, Apparatus, Annuities And Furniture.

16.1 Property used for educational, literary, scientific, religious or charitable purposes under this section must be property in actual direct use, and such use must be primary and immediate and not secondary or remote.

16.1.1 For example: If a college were to purchase a tract and initiate the construction of a building which is to be used for educational, literary or scientific purposes, the property would not be exempt from taxation until the exempt use actually occurred. If, however, those purposes were not to be the end use of the building, the property would not be exempt.

16.2 If a college owning a tract of property with a building on it were to lease the property to a commercial business, reserving a basement room for use as a classroom, the property would not be exempt from taxation. The primary and immediate use of the property would be commercial leasing. The educational use would be secondary and remote.

16.3 If a college, seminary, academy or free school were to lease a tract of property to a commercial user and apply the rents thereby derived for educational purposes, the property would not be exempt from taxation. The primary and immediate use of the property would be commercial leasing. The educational use would be secondary and remote because it would be use of income rather than the property itself.

16.3.1 The term "education" as used in these regulations does not include courses of study not reasonably calculated to develop knowledge or skills resulting in actual gainful employment of students upon completion of training. However, this Subsection should be read in conjunction with Subsection 2.20.

16.3.2 For example: Academies providing traditional formal education or vocational training in bookkeeping, automotive repair, electrical appliance repair, meat cutting, or electrical wiring are "for the purpose of education" within the meaning of this section because such training is reasonably calculated to develop knowledge or skills resulting in actual gainful employment of students upon completion of training.

16.4 A college, seminary, academy or free school offering a program reasonably calculated to develop knowledge or skills resulting in actual gainful employment of students upon completion of training may offer incidental or ancillary courses in subjects not directly related to such programs so long as the predominant course of study is educational as defined in these regulations.

16.4.1 For example: An academy offering a traditional formal educational program of literature, mathematics, art, physical education, composition, languages and similar subjects will not lose its exempt status if it offers ancillary courses in frisbee throwing, hang gliding, horsemanship, or similar nontraditional or nonvocational courses so long as the traditional course of study remains predominant.

16.5 All real property exemptions under this Section apply to individual,

discrete tracts. There shall be no split-listings or allocations of use on a pro rata or other basis exempting part of a tract and making the remainder of the tract subject to taxation.

16.5.1 For example: If a college using a building for educational purposes should lease twenty-five percent (25%) of the floor space of the building to a commercial business, no allocation may be made whereby seventy-five percent (75%) of the building is treated as exempt and twenty-five percent (25%) is subject to taxation. A determination must be made as to whether educational use of the property is primary and immediate. Since seventy-five percent (75%) of the property is used for educational purposes, the chief, main or principal use of the property is educational. The property, therefore, in its entirety, would be exempt. If, however, fifty percent (50%) or more of the floor space available for commercial and exempt use is not used for educational, literary or scientific purposes, the property would not be exempt.

16.6 Property used by a commercial (for profit or private gain) college, seminary, academy or free school is exempt if used for educational, literary or scientific purposes.

§ 110-3-17. Property Belonging To, Or Held In Trust For Colleges Or Universities Located In West Virginia, Or Any Public Or Private Nonprofit Foundation Or Corporation Which Receives Contributions Exclusively For Such College Or University, If The Property Or Dividends, Interest, Rents Or Royalties Derived Therefrom Are Used Or Devoted To Educational Purposes Of Such College Or University.

17.1 In order for this exemption to apply the property in question must:

17.1.1 belong to or be held in trust for a college or university which is located in West Virginia; or

17.1.2 belong to or be held in trust for any public or private nonprofit foundation or corporation which receives contributions exclusively for a college or university which is located in West Virginia but only if the property or the dividends, interest, rents or royalties which are derived from the use of such property is used or devoted to the educational purposes of the college or university.

17.2 Property belonging to a college or university must belong exclusively to that institution; otherwise, the entire property value may not be exempt. Likewise, property held in trust for a college or university must be held in trust exclusively for such institution. No proceeds of the trust may inure to the benefit of other person, public or private.

17.3 Property belonging to or held in trust for a public or private

nonprofit foundation or a public or private nonprofit corporation must belong exclusively to or be held in trust exclusively for such entity; otherwise, the entire property value may not be exempt.

17.3.1 Partial ownership or beneficiary status shared with any other person will destroy the exemption insofar as it concerns the value of the property not owned or held in trust for such public or private nonprofit foundation or public or private nonprofit corporation.

17.3.2 The public or private foundation or the public or private corporation must be organized and operated on a nonprofit basis in accordance with W. Va. Code § 31-1-1 et seq.

17.3.3 The public or private nonprofit foundation or the public or private nonprofit corporation must be a resident of West Virginia.

17.4 Only the value of the property, as determined by the extent to which the property, or the dividends, interest, rents or royalties derived therefrom is used for the educational purposes of the colleges or university, may be exempt from tax.

17.4.1 Example. Property may belong to a university but be leased to a mining company for coal mining purposes. The interest of the mining company is subject to taxation.

17.4.2 Example. Property may belong to a private nonprofit corporation which receives contributions exclusively for a college or university. West Virginia Code § 11-3-9 envisions the property will be used in such a manner that the proceeds derived from such use will be devoted to or used for the educational purposes of the college or university. In order to comply with the constitutional requirement that the property be used for educational purposes in order to be exempt, it is necessary to identify and distinguish the value of the exempt use and the total value of all uses to which the property is subject, with the result that the value of all nonexempt uses will be subject to tax.

17.4.2.1 It is irrelevant to the question of exempting the entire value of the property that the private nonprofit corporation or foundation receives nominal or minimal contributions exclusively for a college or university located in West Virginia, or that such college or university receives such contributions directly from another source. The property value exempt from taxation shall not include the value of the nonexempt uses.

17.4.2.2 It is irrelevant that the private nonprofit corporation or foundation, or the college or university located in West Virginia, is paid nominal or minimal dividends, interest, rents or royalties from the use of the property. Only that portion of the value of the property as represented by the amount the dividends, interest, rents and royalties received and used or devoted

to the educational purposes of the college or university bears to the total value of the property may be exempt from ad valorem property taxation.

§ 110-3-18. Public And Family Libraries.

18.1 A parcel of realty and the buildings thereon are exempt from ad valorem property taxation if the primary and immediate use of the parcel, as a whole, is as a public or family library.

18.2 All books, manuscripts, musical scores, or other literary, scientific or artistic writings or materials and all desks, chairs, tables, cabinets, shelves, bookcases, audio-visual machines, counters, cases, racks and other personal property reasonably necessary to the maintenance or operation of a public or family library are exempt from ad valorem property taxation.

18.3 The exemption applies to a family library only if the materials housed in the physical structure are available for use by the general public.

18.4 A library will not lose its tax exempt status because it offers a book rental service for a nominal fee, makes a charge for overdue books, charges a nominal fee for copies of materials, etc. It is inherent in the tax exempt status that the library not be organized and operated for profit.

§ 110-3-19. Property Used For Charitable Purposes, And Not Held Or Leased Out For Profit.

19.1 Charities must be operated on a not-for-profit basis, must directly benefit society, must be for the benefit of an indefinite number of people, and must be exempt from federal income taxes under 26 U.S.C. §§ 501(c)(3) or 501(c)(4). Moreover, in order for the property to be exempt, the primary and immediate use of the property must be for one or more exempt purposes.

19.2 The beneficiaries of a charity may be limited to a class of beneficiaries bearing a rational relationship to the purpose of the charity.

19.2.1 For example: A charity for the purpose of assisting persons suffering with cancer may limit the class of beneficiaries to cancer victims and their families. Despite the limitation of the class, beneficiaries constitute an indefinite class, and society is generally benefited by the charity.

19.2.2 Charities for combating heart disease, tuberculosis, or multiple sclerosis may likewise limit the classes of beneficiaries receiving their bounty.

19.3 A purported charity may not, however, limit the class of beneficiaries in such a way as to violate the definition of a charity.

19.3.1 For example: A purported charity may not limit the class of beneficiaries to members of a particular family. Such a classification would not constitute an indefinite number of people and society would not be generally benefited by such an organization.

19.3.2 Property of a non-profit community dramatic corporation or children's theatre is exempt as a charity for the promotion of educational welfare.

19.4 Payment of reasonable salaries or wages to administrative staff and employees of a charitable organization will not constitute disqualifying private gain if such salaries or wages closely approximate typical pay rates for comparable positions and are not for the purpose of siphoning-off earnings of the organization.

19.5 Realization of a surplus, or of positive net earnings, may not constitute a disqualifying private gain. So long as any such surplus or earnings are used in furtherance of the charitable activities of the organization, no disqualifying gain can be said to inure to the benefit of any private person.

§ 110-3-20. Property Used For Area Economic Development Purposes By Nonprofit Corporations When Such Property Is Not Leased For Profit.

20.1 Property used for area economic development purposes by nonprofit corporations is property used by nonprofit corporations meeting the definition of 42 U.S.C. § 9802 of a community development corporation, or property used by nonprofit corporations having as their purpose the development of special programs by which the revenues of urban or rural low-income areas may, through self-help and mobilization of the community at large, improve the quality of the economic and social participation in community life in such a way as to contribute to the elimination of poverty and the establishment of permanent, economic and social benefits.

20.2 In order for property used for area economic development purposes by nonprofit corporations to be exempt, it is essential that the use of the property be a use which is exempt under W. Va. Const. Art. X, § 1; thus, it must be "property used for educational, literary, scientific, religious or charitable purposes." Therefore, while property may be owned by a public organization and leased to a private party, the leasehold will be subject to tax unless it can be shown that the property is being used for an exempt purpose. Such property may be exempt if used for training, public service and employment programs or related services for unemployed or low-income persons. The foregoing are examples. Because the exemption question is dependent upon whether the leasehold interest is used primarily as a public service or as a private enterprise for profit, each case will be determined on an individual basis, dependent upon the facts thereof.

20.3 Such property, to be exempt from ad valorem property taxation, must conform to one or more of the exemptions set forth in Article X, § 1 of the Constitution of West Virginia. For example: Property used for area economic development purposes will typically conform to the criteria defining a charitable use. Such property may, however, sometimes come under the public property exemption or the exemption for educational, literary or scientific use.

20.4 Property used for area economic development purposes by nonprofit corporations and not leased out for profit is exempt from ad valorem property taxation if such property is used for charitable purposes in accordance with Section 9 of these regulations, is an educational, literary or scientific institution in accordance with these regulations, but nonprofit in nature, or in state, county or municipal property or property of the United States or otherwise exempt public property in accordance with these regulations.

20.5 Upon implementation of the statewide reappraisal, this exemption, to the extent it applies to intangible personal property, will be moot because W. Va. Const. Art. X, § 1b removes intangible personal property from ad valorem property taxation unless the Legislature thereafter subjects such property to such taxation.

§ 110-3-21. Real Estate Not Exceeding One Half Acre In Extent, And The Buildings Thereon, And Used Exclusively By Any College Or University Society As A Literary Hall, Or As A Dormitory Or Club Room If Not Leased Or Otherwise Used With A View To Profit.

21.1 All real estate not exceeding one-half acre in extent and the buildings thereon, used exclusively by any college or university society as a literary hall, or as a dormitory or club room and not leased or otherwise used with a view to profit is presumed to be exempt from ad valorem property taxation. If the tract exceeds one-half acre in extent, the owner thereof must demonstrate the use is exempt.

21.2 In order for the property to be exempt, the college or university society must be using the property in the required manner; that is to say, that any revenues generated through the use of the property shall not exceed the cost of maintaining the property and the reasonable operating costs of the society, if the revenues generated through the use of the property are specifically designated for such purposes.

21.3 In order for the property to be exempt, the college or university with which the society is associated must be accredited by the accrediting organization recognized by the State.

21.4 The college or university society may not be organized on a for-profit basis.

21.5 If the college or university society is itself leasing the property in question from another, the lessor may not realize a profit from the lease. If the property is being used for the above stated exempt purpose by the lessee, the leasehold will be exempt from ad valorem property taxation. If the revenue received by the lessor exceeds the actual cost of maintaining the property, exclusive of any interest on any mortgages, notes of indebtedness or similar financial item entered into for the purpose of purchasing the property, the fee interest will be subject to ad valorem property taxation.

21.6 If the college or university society leases or subleases rooms to others, it may not realize a profit from the leases; the question of profit is to be determined over the entire period of the lease.

§ 110-3-22. Property Belonging To Benevolent Associations, Not Conducted For Private Profit.

22.1 All property which belongs to a fraternal, benevolent, or relief society, or association and which is not used for private profit is exempt from ad valorem property taxes. Therefore, a lodge or meeting hall which is actually used a greater percentage of the time as a place for socializing, dancing, etc., is not being used for charitable purposes.

22.2 Exemptions from ad valorem property taxation in favor of clubhouses, halls, lodges, and similar properties of fraternal, benevolent, or relief societies, or associations shall be extended only where such property is primarily and immediately used for charitable purposes.

22.3 Use of the property of a fraternal, benevolent, or relief society, or association is not exempt if the primary use of the property is for social purposes for the enjoyment of its members or others, rather than for charitable purposes.

22.4 Licensed fraternal benefit societies authorized under Section 33-23-1 et seq. of the W. Va. Code are addressed in Section 35.39 of these regulations.

§ 110-3-23. Property Belonging To Any Public Institution For The Education Of The Deaf, Dumb, Or Blind.

23.1 Property belonging to any public institution for the education of the deaf, dumb or blind is exempt from ad valorem property taxation if such property is primarily and immediately used for charitable purposes in accordance with Section 19 of these regulations, or for educational purposes in accordance with Section 16 of these regulations.

§ 110-3-24. Charitable Hospitals.

24.1 In general.

24.1.1 Section 11-3-9 of the West Virginia Code provides:

> All property, real and personal, described in this section, and to the extent herein limited, shall be exempt from taxation, that is to say: . . . property belong to any . . . hospital not held or leased out for profit. . . .

24.1.2 Except as otherwise provided in these regulations, health care organizations and hospitals will not qualify for exemption from property tax if they are operated, in any way, for the private gain of physicians, officers, or members of the board of a hospital or other private individuals. For purposes of this regulation, private gain is any economic benefit accruing to any individual or entity other than the charitable hospital: Provided, That economic benefit does not include payments for the receipt of reasonable goods and services which are provided to the hospital under valid arms-length contracts, as that phase is generally defined.

24.1.3 Payment by a hospital of salaries to administrative and medical staff, or the realization of a surplus or positive net earnings does not necessarily constitute such disqualifying private gain. Payment of salaries commensurate with services rendered is simply a cost of operating a charitable organization. As long as any surplus of the organization is used to continue its charitable activities, no disqualifying gain can be said to inure to the benefit of any private individual. For purposes of these regulations, surplus is the excess of the gross earnings over the expenditures incurred producing such gross earnings.

24.2 Restriction of beneficiaries.

24.2.1 Hospital administration policies that discriminate on the basis of race, color, sex, or national origin will disqualify a hospital from tax exempt status.

24.2.2 The effect of other kinds of beneficiary restrictions on a hospital's tax exempt status depends on the particular restriction. Certain types of restrictions on patient admissions are permissible because of the specialized nature of the medical care provided by some hospitals. For example, children's hospitals provide care exclusively for children, and the Shriners' Hospital specializes in the care of burn victims. Such restrictions rarely threaten a hospital's tax exempt status, if they are applied in a nondiscriminatory manner, because their purpose is to provide better patient care.

24.2.3 Restrictions that limit admissions to members of a society, religious order, or association that founded the hospital or to paying patients

are not acceptable. The West Virginia statute exempts only institutions that are "pure public charity" or those that fulfill truly "charitable purposes."

24.3 Ownership of property.

24.3.1 Section 11-3-9 of the West Virginia Code requires that property belonging to the hospital not be held or leased out for profit.

24.3.2 In West Virginia a lease of real estate is a chattel real that is taxed as personal property. If a lease has a separately determinable market value, it is proper to assess the value of the lease to the lessee and the value of the reminder to the lessor.

24.3.3 A leasehold interest held by a charity as the lessee would constitute personal property exempt from ad valorem taxation as to that charity if it were separately assessable.

24.4 Office space for staff physicians.

24.4.1 For purposes of Section 24, "staff physicians" are physicians who are hospital based in that they are employed under contract by the hospital on more than a half-time basis, radiologists, pathologists, anesthesiologists and similar positions, or, if the hospital is a teaching hospital, are members of the teaching faculty or administration; i.e., dean of the faculty, department head, etc. Physicians who do not qualify to be classified as a staff physician are classified as "affiliated physicians."

24.4.2 Hospitals may provide space for use by physicians in connection with the treatment of patients admitted to the hospital and with hospital related responsibilities such as medical staff and committee meetings, medical record keeping and charting, locker room for changing clothes, medical reference library, space for consulting with other physicians regarding treatment, space for dictating notes regarding patient progress, or similar activities.

24.4.3 A hospital may provide free office space to staff physicians as an enticement to qualified medical personnel. The hospital may not provide free office space to some staff physicians and charge others. Furthermore, if office space is available, a hospital may not deprive some staff physicians of office space when others receive free office space. Such offices may not be so used as to cause the primary and immediate use of the hospital property to be other than charitable. For instance, staff physicians holding office space on an exempt hospital tract may examine and treat paying, for profit patients in such offices, but such use of the property may not be so extensive as to make the primary and immediate use of the tract as a whole a profit making operation rather than a charitable one in accordance with section 19 of these regulations.

24.4.4 Hospitals frequently make part of their property available for staff physician's offices. Such office space may be rented to a physician at nominal commercial rates, or provided free, or it may be considered compensation for administrative duties such a physician performs in the hospital.

24.4.5 The private use of hospital office space by affiliated physicians is not viewed favorably. Such offices are primarily for the convenience or profit of the physician. The exclusive use of a hospital office for a physician's own private gain is inconsistent with the charitable use requirement of the Constitution and the exemption statute. Rental of office space to a physician at a market rate is a strong indication that the property is being used for the sole benefit of the physician.

24.5 Recreational facilities.

24.5.1 Use of charitable property for tennis courts, playgrounds and parks for employees or other nonpatient beneficiaries may not be considered reasonably necessary or incidental to the primary functions of a hospital. Unlike food and retail concessions, however, recreation may be recognized for its therapeutic value to patients, the intended beneficiaries of the hospital's services. So long as the primary use of such facilities is for direct patient care, incidental use by hospital personnel will not destroy the charitable nature of those facilities. However, use of such recreational facilities by members of the general public who are not patients of the hospital, especially if these are charges for such use, is not consistent with charitable use.

24.6 Categories of hospitals.

24.6.1 General. - There are three generally recognized categories of hospital: for profit, governmental, and nonprofit or not-for-profit.

24.6.2 Taxability.

24.6.2.1 For-profit hospital. - A hospital held or operated for profit is not exempt from ad valorem property taxes.

24.6.2.2 Government owned hospital.

24.6.2.2.a A hospital owned and operated by the United States (or an agency or instrumentality thereof) is exempt from ad valorem property taxes on its real and personal property unless federal law permits it to be taxed in accordance with Section 8 of these regulations.

24.6.2.2.b A hospital owned and operated by the State of West Virginia (or one of its agencies or institutions) is exempt from ad valorem property taxes on its real and personal property in accordance with Section 9 of

these regulations.

24.6.2.2.c A hospital owned and operated by any county, municipality or other political subdivision of this State is exempt from ad valorem property taxes if the hospital is used for public purposes in accordance with Section 10 of these regulations.

24.6.2.2.d A hospital owned by any county, municipality or other political subdivision of the State but operated as a separate corporation pursuant to a lease may be taxable depending upon the nature of the lessor and whether the property is being used for charitable purposes.

24.6.2.3 Nonprofit or not-for-profit hospital. - A hospital owned and operated, or leased and operated, by a nonprofit or not-for-profit corporation may be exempt from ad valorem property taxation if the primary and immediate use of the property is for charitable purposes. If in the situation where the hospital is leased to such a corporation and the lease is not a below market lease, the leaseholder would not be taxable but the fee interest would be taxable to the lessor.

24.7 Hospitals.

24.7.1 The term "hospital," does not include institutions regularly licensed by the West Virginia Department of Human Services (formerly Department of Welfare), such as child caring institutions, day nurseries, child-care centers and foster boarding homes. However, institutions having dual functions, one of which is clearly subject to hospital licensure by the West Virginia Department of Health, are "hospitals" within the meaning of these regulations, if such institutions are so licensed.

24.7.2 The term "hospital" as used in these regulations does not include homes or institutions regularly licensed by the West Virginia Nursing Home Licensing Board.

24.7.3 The term "hospital" as used in these regulations, does not include first aid stations and emergency care facilities or other facilities which do not provide reception and care of persons for a continuous period longer than twenty-four hours, for the purpose of providing room, board, nursing service and hospital facilities for use in diagnosis and treatment of medical conditions or infirmities; Provided, That such a facility may be included under the term "hospital" if it is actually owned by a hospital, is operated on a charitable basis, and is primarily used for such patient care activities as outpatient surgery, physical therapy and rehabilitation, drug and alcohol abuse counseling, and mental health counseling.

24.7.4 Under the Constitution of this State, property used for charitable purposes may be exempted from taxation. Property used for a hospital

cannot be exempted from taxation under the Constitution of this State unless it is used for charitable purposes. W. Va. Const. art. X, § 1. Reynolds Memorial Hospital et al. v. County Court of Marshall County, 78 W. Va. 685, 90 S.E. 238 (1916); State ex rel. Cook v. Rose, 299 S.E.2d 3 (W. Va. 1982).

24.7.5 Hospital property, in order to be exempt from ad valorem property taxation, must not be held or leased out for profit. W. Va. Code § 11-3-9.

24.7.6 Under W. Va. Const. art. X, § 1, the exemption of property from taxation depends on its use. To warrant such exemption for a purpose there stated, the use must be primary and immediate, not secondary or remote. State ex rel. Farr v. Martin, 105 W. Va. 600, 143 S.E. 356 (1928).

24.7.7 The fact that a hospital is incorporated as a nonstock, nonprofit hospital does not make it charitable, even though some operating funds are derived from private, voluntary contributions; only the nature of its activities can determine if it is operated in a charitable manner.

24.7.8 Any Internal Revenue Service determination as to exemption of a hospital from Federal taxation under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code [26 U.S.C. §§ 501(c)(3) or 501(c)(4)] shall not be determinative of the issue of whether property is exempt for ad valorem property tax purposes.

24.7.9 If the hospital ceases to be used for charitable purposes, it will lose its tax exempt status.

24.8 Admissions and ability to pay.

24.8.1 In order for a hospital to be charitable it must serve a general public interest, not a private interest. Therefore, the services of the hospital must be made available to the general public and charity care must be made available in accordance with the hospital's charity care policy which must be developed by and approved by the hospital's board of trustees: Provided, That such charity care policy actually provides for charity care at a level consistent with the charitable classification of the hospital.

24.8.2 The most important single element in determining whether a hospital is charitable is its charity care policy on the admission of patients who are unable to pay. For purposes of this Section 24, charity care should not include bad debts.

24.8.3 The admission policy of a hospital, in order to be considered charitable, at a minimum must reflect the following standards:

24.8.3.1 The hospital may not arbitrarily restrict admission to

certain individuals or groups. Admission may be restricted to certain groups, so long as the restriction reflects a definite benefit to the general public interest, e.g., restricting admission to children, burn victims or heart patients.

24.8.3.2 A hospital may not insist that patients provide assurance that all of their bills will be paid as a condition of admission for the purpose of obtaining emergency medical care or medical care for the treatment of a life threatening condition.

24.8.3.3 A hospital may develop reasonable rules and regulations which require that those patients who are financially able so to do to pay the charges incurred for the care provided. However, necessary medical care cannot be withheld until a patient, or a person seeking such care, demonstrates that charges incurred will be paid. Failure to provide such medical care may be sufficient cause to deny tax exempt status to the hospital. A hospital may also develop reasonable rules and regulations which allow persons, including infants, who are referred by a court to the hospital to be given a priority for receiving hospital services over those services to be provided to indigent or charity patients. State ex rel. Cook v. Rose, 299 S.E. 3 (W. Va. 1982).

24.8.4 A hospital, to be charitable, must be operated in such a manner so as to provide necessary care to those who are not able to pay for the services rendered, not exclusively for those who are able and expected to pay. To the extent of its actual financial ability, a hospital, to be classified as charitable, must provide free and below cost necessary medical services to those who are unable to pay so long as such service is consistent with its charity care policy.

24.8.5 A hospital will not be considered charitable and, therefore, will not be granted tax exempt status if it does not provide a reasonable volume of free and below cost necessary medical services to those who request such medical services but who are unable to pay for those services; the reasonableness of the volume of such services provided shall be determined by the character and nature of the community which the hospital services and the actual financial ability of the hospital to provide such free or below cost services: Provided, That at the time free or below cost medical care is sought:

24.8.5.1 the hospital routinely provides such medical services,

24.8.5.2 capability presently exists within the hospital to render the service requested,

24.8.5.3 the care requested is medically appropriate,

24.8.5.4 the hospital in providing such care will not be sanctioned by a professional standards review board, and

24.8.5.5 the rendering of such medical services is consistent with the charity care policy of the hospital.

24.8.6 Governmental or nonprofit hospitals must establish procedures and maintain records which demonstrate compliance with the provisions of this Section 24.8. Such hospitals shall plainly post in the emergency and admitting areas a notice containing a statement of the existence of their obligation to provide free and below cost care and of the criteria and mechanism for receiving such care. Such hospitals shall provide written notification of the existence, criteria and mechanism for receiving such care, at a minimum, to each person admitted or treated who does not demonstrate payment coverage under governmental programs or private insurance. Such hospitals shall create and maintain records demonstrating that such required criteria and mechanisms are established, that such required policies have been posted and distributed, and which record any and all requests for free or below cost care, the disposition of such request, and the rationale for such disposition. To the extent the specific required information is on file with the West Virginia Health Care Cost Review Authority, it is unnecessary for hospitals to maintain separate records for purposes of the Section 24.8.6.

24.9 Private gain or benefit.

24.9.1 Unless certain conditions are met, no property or activity of a hospital which is exempt from taxation shall cause any economic benefit to inure to any private individual(s) or business(es) other than the charitable hospital. No economic benefit shall inure to any employee, staff member, trustee, director or other person associated with the hospital: Provided, That economic benefit does not include payments for the receipt of reasonable goods and services, which are provided to the hospital under valid arms-length contracts, as that phrase is generally defined.

24.9.1.1 Provided such an agreement is entered into on an arms length basis, as that phrase is generally defined, a hospital may lease a portion of its space to private business for the purpose of furnishing necessary segments of the normal hospital operation; e.g., leasing space to a third party to operate a for-profit pharmacy. Total leased areas shall not be more than ten percent (10%) of the available floor space of the hospital; available floor space shall be all floor space exclusive of maintenance areas or common areas such as hallways and stairways.

24.9.1.2 A hospital complex may include more than one building or structure. If the primary use of one or more structures is for nonexempt purposes, such structures and the land upon which they are situated must be divided from the remaining structures in order for the remaining structures to continue as exempt property. The division of property shall be accomplished in accordance with W. Va. Code § 11-4-18.

24.9.2 A hospital may pay salaries to its employees and staff. The salaries paid must be commensurate with the value of the services rendered. The salaries paid to employees and staff members must not be excessive when compared with other salaries for similar services in the community. For the purpose of these regulations and because of the rural nature of West Virginia, "community" may be determined on a state-wide basis; Provided, That when developing salary comparisons, the salaries paid at hospitals outside of West Virginia may be used so long as such hospitals are not in excess of 100 miles from the borders of West Virginia. No hospital shall pay a salary that is designed to siphon off hospital funds.

24.9.3 A hospital may accumulate and aggregate a surplus of revenue over expenses; provided, such surplus is reasonable and is as a result of an existing written policy which specifies that such surplusage is to be used in the furtherance of the hospital's charitable activities, that such use actually occurs, and that such surplusage is not to be used to the economic benefit of any private person.

24.9.3.1 A hospital may not pay out any surplus operating funds to any individual or organization. This prohibition applies to payments in the form of dividends and excessive salaries; however, bonuses and similar employee incentive plans are not necessarily inconsistent with the charitable use basis for the exemption where it is shown that such plans are not merely a device for diverting profits and that they contribute directly and immediately to the charitable purpose.

24.9.3.2 Any excess operating funds shall be used only for the hospital's purposes. Such purposes must include the hospital's charitable activities and may include other activities such as the payment of reasonable salaries, the purchase of new or replacement equipment, and the cost of capital improvements which carry out those charitable activities. A hospital may enter into other activities which will provide additional revenues so long as such activities are accomplished in accordance with a plan approved by the hospital's board of directors; however, if such other activities are performed on a for-profit basis, such as owning and operating a doctor's office building or a medical laboratory apart from the hsopital's own laboratory, it is presumed that a separate corporation will be formed for those purposes and that the hospital will receive a reasonable rate of return on the revenues it provides.

24.9.4 The funds that a hospital collects may not be used to pay off a mortgage against the hospital if, when the debt is paid off, the ownership of the hospital will vest in a private individual, noncharitable corporation or association or other noncharitable entity.

24.9.5 If a hospital is transferred from proprietary ownership to ownership which will operate the hospital as a charitable hospital, no economic benefit shall inure to any of the former owners, directors, trustees, staff

members, or any other person subsequent to the time of transfer as a direct or indirect result of the transfer.

24.9.6 When a hospital is transferred from proprietary ownership to an ownership for charitable operation, and the former owners are the only members or a substantial number of the members of the medical staff, the hospital may be exempt from ad valorem property tax. However, the hospital will be subject to close scrutiny so as to determine whether or not it is operating in the interest of the former owners.

24.10 Open medical staff.

24.10.1 A hospital must not restrict access to the use of hospital facilities by any qualified, competent physician who is licensed to practice medicine in West Virginia: Provided, That such competency and qualification is determined by the hospital in accordance with its published by-laws, policies, etc.

24.10.2 A hospital may restrict its medical staff to a limited number of members, based upon the service needs of the hospital. However, any restrictions of the hospital's medical staff will be closely scrutinized in determining whether or not the hospital is exempt from ad valorem taxation.

24.11 Charges and fees.

24.11.1 A hospital may charge reasonable fees for the services that it provides to a patient. These charges may include a reasonable amount above the actual cost of service for the future use of the hospital.

24.11.2 Any revenue that the hospital realizes from its charges shall be used solely for the maintenance and support of the hospital: Provided, That a hospital may accumulate and aggregate a surplus of revenues over expenses in accordance with the procedures authorized in subsection 24.9.3 of these regulations.

24.11.3 If a hospital's expenses exceed its revenue, voluntary contributions may be used to make up the difference.

24.12 Voluntary contributions and other revenue.

24.12.1 Any hospital may receive voluntary contributions. Any voluntary contributions received by a hospital may be used for the following purposes:

24.12.1.1 To defray the expense of providing free or below cost service to patients who cannot afford to pay for it. Any funds from unrestricted voluntary contributions must be used to provide free or below cost

services before being used for any other purpose; this is not intended to limit the amount of funds to be used to provide free and below-cost services. Restricted contributions shall be used for the specified purposes. However, if specialized equipment is needed and the hospital's financial condition is such that the funds necessary to complete the purchase are not available, the hospital may utilize up to 50% of the unrestricted contributions available and otherwise not budgeted at the beginning of the hospital's fiscal year to complete the purchase; this procedure should be considered the exception to the general rule because sound management practices dictate that necessary purchases should be identified during the annual budget development process and appropriate purchase planning should occur at that time.

24.12.1.2 To purchase equipment to be used in the provision of medical treatment.

24.12.1.3 To purchase real estate for capital expansion.

24.12.1.4 To cover the cost of construction of capital improvements, so long as they are to be used directly in the provision of medical services.

24.12.2 If a hospital receives funds for capital improvement under the Hill-Burton Act (42 U.S.C. § 291 et seq.), it is required, as a condition of receipt of the funds, to provide a reasonable amount of free or below cost services to those who are unable to afford such services. So long as the hospital continues to provide such services to those who are unable to pay for services rendered, free or below cost services shall continue to be considered as charitable; Provided, however, That the hospital's actual financial ability allows the provision of such services.

24.13 Ancillary functions.

24.13.1 A hospital may engage in certain non-medical activities, so long as these activities are designed to serve hospital staff, employees, patients and visitors and are not such as to cause the primary and immediate use of the property to be other than charitable use in accordance with Section 19 of these regulations. These activities include, but are not limited to:

24.13.1.1 The operation of a parking facility,

24.13.1.2 The operation of a pharmacy,

24.13.1.3 The operation of a cafeteria or coffee shop, and

24.13.1.4 The operation of a gift shop.

24.14 Leasing.

24.14.1 A hospital may lease part of a tract out for any legal use and retain the tax exemption described under this Section so long as the primary and immediate use of the tract is charitable in accordance with Section 19 of these regulations and other restrictions in these regulations are not violated.

24.15 Vacant land and construction.

24.15.1 When a hospital purchases land which it intends to use for capital improvements, which will be used for charitable purposes, the land shall not be exempt so long as the land is vacant. So long as the land is vacant, it can be sold and used for noncharitable purposes.

24.15.2 Vacant tracts owned by a hospital will remain subject to taxation, even if plans are made which show that the land will be used for tax exempt purposes.

24.15.3 If construction is begun on a tract for the purpose of making improvements to be used for hospital purposes, such property shall not be exempt under this Section until it has been put to such actual use as to make the primary and immediate use of the property charitable in accordance with Section 19 of these regulations.

24.15.4 If construction is begun on a tract exempt under this Section from ad valorem taxation at the time construction is initiated, such construction shall not void the pre-existing exemption if the proposed use of the improvements so constructed is to be a charitable use consistent with the provisions of this Section.

24.15.5 Construction of improvements, the proposed use of which is not charitable, shall not void a pre-existing exemption under this section until such time as the primary and immediate use of the property is no longer charitable in accordance with this Section and Section 19 of these regulations.

24.16 Hospital owned housing.

24.16.1 Property which a hospital owns and uses for housing for doctors, nurses, interns, technicians and other hospital personnel may be exempt from ad valorem property tax. It is necessary for the housing to be located on the same tract of property as the hospital. Also, it is incumbent upon the hospital to prove that the housing is being used in a way which directly and immediately relates to the charitable purposes. Otherwise, such housing would be used for purposes which would put it in competition with generally available commercial housing; such a use would not be primarily and immediately charitable.

24.17 Education facilities on hospital property.

24.17.1 Possession by a hospital of property used as a place of education shall not void the exemption provided under this Section so long as the primary and immediate use of the property is for charitable purposes under Section 19 of these regulations. If education is the primary and immediate use of the property, then the exemption provided under this Section will typically no longer apply. However, the exemption provided under Section 16 of these regulations may apply.

24.17.2 Any property owned by a hospital which is used as a place of residence for medical or nursing students, or other students who are studying in a medical related field at the hospital shall not be exempt from ad valorem property tax unless such property is exempt under Section 21 of these regulations.

24.17.3 Recreational facilities shall not be considered property used primarily and immediately for charitable purposes unless such facilities are designed for and primarily and immediately used by patients of the hospital.

24.18 Hospital service corporations, medical service corporations, dental service corporations and health service corporations.

24.18.1 Hospital service corporations, medical service corporations, dental service corporations and health service corporations are exempt from ad valorem property taxation. See W. Va. Code § 33-24-4. See Section 35.40 of these regulations.

24.19 Health care corporations.

24.19.1 All health care corporations are exempt from ad valorem property tax. See W. Va. Code § 33-25-3. See Section 35.41 of these regulations.

§ 110-3-25 House of Refuge and Lunatic and Orphan Asylums.

25.1 House of refuge.

25.1.1 A house of refuge is exempt from ad valorem property taxation if such house of refuge is operated for charitable purposes in accordance with Section 19 of these regulations or is exempt state, county or municipal property or property of the United States or otherwise exempt public property in accordance with these regulations.

25.1.2 For example: A community shelter for battered or abused women is a house of refuge within the meaning of this section.

25.1.3 A Salvation Army mission providing food and living quarters

to destitute people is a house of refuge within the meaning of this section.

25.2 Lunatic or orphan asylum.

25.2.1 A lunatic asylum is exempt from ad valorem property taxation if such lunatic asylum is operated for charitable purposes in accordance with Section 19 of these regulations or is exempt state, county or municipal property or property of the United States or otherwise exempt public property in accordance with these regulations.

25.2.2 An orphan asylum is exempt from ad valorem property taxation if such orphan asylum is operated for charitable purposes in accordance with Section 19 of these regulations, is an educational institution in accordance with Section 16 of these regulations or is exempt state, county or municipal property or property of the United States or otherwise exempt public property in accordance with these regulations.

§ 110-3-26 Homes for Children or for the Aged, Friendless, or Infirm, not Conducted for Private Profit.

26.1 A home for children or for the aged, friendless, or infirm not conducted for private profit is exempt from ad valorem property taxation if such home is for charitable purposes in accordance with Section 19 of these regulations, or an educational institution in accordance with Section 16 of these regulations or is exempt state, county or municipal property or property of the United States or otherwise exempt public property in accordance with these regulations.

26.2 A home for the aged will not qualify for this exemption if in order to gain admittance a person must deposit a substantial amount of money which can be equated to the prepayment of rent, must pay an application fee, must pay a damage deposit or must agree to pay a room charge unless the charge is substantially less than market value and the difference is not subsidized through a government program. It is necessary that the exempt activity meet the constitutional requirement of charitable use.

§ 110-3-27 Fire Engines and Implements for Extinguishing Fires, and Property Used Exclusively for the Safekeeping Thereof, and for the Meeting of Fire Companies.

27.1 All fire engines, implements for extinguishing fires, all equipment which is used by firemen in conjunction with their job and all real estate upon which fire houses are located is exempt from ad valorem property tax if such property is used exclusively for a charitable purpose in accordance with Section 19 of these regulations or is exempt state, county or municipal property or property of the United States or otherwise exempt public property in accordance with these regulations.

27.2 To the extent that a private corporation maintains at a manufacturing facility, or other facility of business, a separate structure which houses one or more fire engines and to the extent that such structure and only that structure has been divided from the remainder of the business facility, such structure is exempt.

27.3 If a private person, whether an individual, a corporation or otherwise, is in the business of selling, leasing, repairing or servicing equipment used for extinguishing fires, the exemption provided herein shall not apply to any such equipment which is intended to be used by a client or customer of the business.

§ 110-3-28 Property on Hand to be Used in the Subsistence of Livestock on Hand at the Commencement of the Assessment Year.

28.1 All personal property on hand which is to be used in the subsistence of livestock on hand at the commencement of the assessment year is exempt from ad valorem property taxation.

28.2 For example: Feed troughs and water troughs not permanently affixed to realty, portable coops, horse trailers and portable livestock pens are exempt to the extent that they are actually and directly used for, and reasonably necessary for the care or feeding of livestock on hand at the commencement of the year. Feed troughs and water troughs, coops and livestock pens which are affixed to realty and fences, gates, barns and outbuildings are not subject to the exemption, notwithstanding the fact that they are necessary for the care and feeding of livestock.

28.3 Livestock includes, but is not limited to: cattle, horses, sheep, chickens, domestic ducks, domestic geese, domestic turkeys, catfish, rabbits, buffalo, mink, foxes, otters, pigs, mules, donkeys, domestic goats, ponies and earthworms when raised for profit or consumption or use on the farm.

§ 110-3-29 Household Goods and Personal Effects.

29.1 Household goods and personal effects if not held or used for profit are exempt from ad valorem property taxation. W. Va. Const. Art. X, § 1b.

29.2 Household goods to the value of two hundred dollars, if used for profit, are exempt from ad valorem property taxation.

29.3 Household goods, if used for profit, shall be valued at current market value.

29.4 Household goods in excess of the value of two hundred dollars, when held or used for profit, shall be valued at current market value.

§ 110-3-30 Bank Deposits and Money.

30.1 All bank deposits and money (including cash) are exempt from ad valorem property tax. W. Va. Const. Art. X, § 1a.

30.2 Individual coin collections are treated as cash and exempt, unless the collection is being held or maintained for the purpose of future profit. In such case, the collection is valued as tangible personal property and only the value in excess of face value of coins which are U.S. Money is subject to taxation.

§ 110-3-31 Household Goods not Held or Used for Profit.

31.1 Household goods not held or used for profit are exempt from ad valorem taxation.

§ 110-3-32 Personal Effects not Held or Used for Profit.

32.1 Personal effects not held or used for profit are exempt from ad valorem taxation.

§ 110-3-33 Dead Victuals.

33.1 All dead victuals which are owned by individuals and intended for their use and consumption are exempt from taxation.

33.2 Dead victuals which are being, or have been, processed for sale to others are to be considered inventory, and are subject to ad valorem property tax. These shall include, but are not limited to the following:

33.2.1 Foodstuffs which are being processed for distribution to outlets for sale to the ultimate consumer.

33.2.2 The inventory held by retail food outlets.

33.2.3 The inventory of a restaurant and other food service establishments.

§ 110-3-34 Property Used for the Public Purposes of Distributing Water or Providing Sewer Services by a Duly Chartered Nonprofit Corporation When Such Property is not Held, Leased Out, or Used for Profit.

34.1 Property which is used for the public purposes of distributing water or providing sewer services by a duly chartered nonprofit corporation when such property is not held, leased out, or used for profit is exempt.

§ 110-3-35 Other Property Exempt by Law.

35.1 Bonds for cost of real estate and public buildings and issued under section 7-3-1 et seq. of the West Virginia Code are exempt from ad valorem property taxation. See W. Va. Code § 7-3-7.

35.2 Negotiable revenue bonds for acquiring, equipping, operating or otherwise supporting or improving certain medical and long-term care facilities issued under section 7-3-1 et seq. of the West Virginia Code are exempt from ad valorem property taxation. See W. Va. Code § 7-3-14.

35.3 Property of any parks and recreation commission created by a county commission in accordance with Section 7-11-1 et seq. of the W. Va. Code is exempt from ad valorem property taxation. Bonds, notes, debentures and other evidences of indebtedness of such parks and recreation commission are exempt from ad valorem property taxation. See W. Va. Code § 7-11-2.

35.4 Property of county development authorities established in accordance with section 7-12-1 et seq. of the West Virginia Code are exempt from ad valorem property taxation. Bonds, notes, debentures and other evidence of indebtedness of such authorities are exempt from ad valorem property taxation. See W. Va. Code § 7-12-10.

35.5 Property of emergency ambulance authorities created under Section 7-15-1 et seq. of the West Virginia Code is exempt from ad valorem property taxation. Interest on obligations and all evidences of indebtedness of any such authority are exempt from ad valorem property taxation. See W. Va. Code § 7-15-13.

35.6 Property of urban mass transportation authorities created under section 8-27-1 et seq. of the West Virginia Code is exempt from ad valorem property taxation. See W. Va. Code § 8-27-20.

35.7 All real and personal property acquired, held and used by an adjoining state in this State pursuant to the provisions of Section 8-28-9 of the West Virginia Code for acquisition, establishment, construction, lease, equipment, improvement, maintenance or operation of an airport exclusively for nonprofit public use is exempt from ad valorem property taxation in accordance with section 11 of these regulations. See W. Va. Code § 8-28-9.

35.8 Property of regional airport authorities created under Section 8-29-1 et seq. of the West Virginia Code is exempt from ad valorem property taxation. Bonds, notes, debentures and other evidences of indebtedness of such authorities are exempt from ad valorem property taxation. See W. Va. Code § 8-29-13.

35.9 Property of county airport authorities created under Section 8-29A-1 et seq. of the West Virginia Code is exempt from ad valorem property taxation.

Bonds, notes, debentures and other evidences of indebtedness of such authorities are exempt from ad valorem property taxation. See W. Va. Code § 8-29A-13.

35.10 Property of municipal building commissions, county building commissions or municipal-county building commissions created under Section 8-33-1 et seq. of the West Virginia Code is exempt from ad valorem property taxation. Bonds, notes, debentures and other evidences of indebtedness of such commissions are exempt from ad valorem property taxation. See W. Va. Code § 8-33-7.

35.11 Grants of all classes of welfare assistance received under the provisions of Chapter 9 of the West Virginia Code are exempt from ad valorem property taxation. See W. Va. Code § 9-5-1.

35.12 Bonds for payment of costs associated with athletic establishments created or acquired in accordance with Section 10-2A-1 et seq. of the West Virginia Code are exempt from ad valorem property taxation. See W. Va. Code § 10-2A-10.

35.13 All bonds of the State of West Virginia or any political subdivision thereof issued for original indebtedness and not for payment of current expenses under Section 13-1-1 are exempt from ad valorem property taxation. See W. Va. Code § 13-1-33.

35.14 All bonds of the State of West Virginia or of any political subdivision thereof issued under Section 13-2-1 et seq. of the West Virginia Code for the purpose of refunding bonds are exempt from ad valorem property taxation. See W. Va. Code § 13-2-8.

35.15 Refunding bonds issued under Section 13-2A-1 et seq. of the West Virginia Code and the income therefrom are exempt from ad valorem property taxation. See W. Va. Code § 13-2A-10.

35.16 Industrial Development and Commercial Development Bond Act.

35.16.1 Revenue bonds for industrial and commercial development issued pursuant to Section 13-2C-1 of the West Virginia Code and the income therefrom are exempt from ad valorem property taxation. See W. Va. Code § 13-2C-15.

35.16.2 The real and personal property which a county commission or a municipality may acquire to be leased, sold or otherwise disposed of, according to the provisions of Section 13-2C-1 et seq. of the West Virginia Code is exempt from ad valorem property taxation. See W. Va. Code § 13-2C-15.

35.17 Airport Development Bond Act.

35.17.1 Revenue bonds issued pursuant to the Airport Development Bond Act, section 13-2D-1 et seq. of the West Virginia Code, and the income therefrom are exempt from ad valorem property taxation. See W. Va. Code § 13-2D-12.

35.17.2 Real and personal property which a county commission may acquire for an airport according to the provisions of Section 13-2D-1 et seq. of the West Virginia Code is exempt from ad valorem property taxation. See W. Va. Code § 13-2D-12.

35.18 Refunding bonds issued pursuant to the Revenue Bond Refunding Act, section 13-2E-1 et seq. of the West Virginia Code, and the income therefrom are exempt from ad valorem property taxation. See W. Va. Code § 13-2E-12.

35.19 Armories or any property acquired or used by the State Armory Board under the provisions of Section 15-6-1 et seq. of the West Virginia Code and the bonds issued thereunder and the income therefrom, including any profit made on the sale thereof, are exempt from ad valorem property taxation. See W. Va. Code § 15-6-18.

35.20 Any supplies or equipment purchased by the West Virginia Sheriff's Bureau (created under Section 15-8-1 et seq. of the West Virginia Code) through the special fund created under Section 15-8-7 of the West Virginia Code are exempt from ad valorem property taxation. See W. Va. Code § 15-8-12.

35.21 Sewerage works.

35.21.1 Revenue bonds issued under Section 16-13-1 et seq. of the West Virginia Code, relating to sewerage works of municipal corporations and sanitary districts, and the interest thereon are exempt from ad valorem property taxation. See W. Va. Code §§ 16-13-22f and 16-13-10.

35.21.2 All properties and facilities of municipalities addressed under Section 16-13-1 et seq. of the West Virginia Code owned or used in connection with sewerage systems are exempt from ad valorem property taxation. See W. Va. Code § 16-13-22f.

35.21.3 All monies, revenues, and other income of municipalities addressed under Section 16-13-1 et seq. of the West Virginia Code derived from sewerage systems are exempt from ad valorem property taxation. See W. Va. Code § 16-13-22f.

35.22 Public service districts for water and sewerage services.

35.22.1 All property and income of public service districts for water and sewerage services established in accordance with Section 16-13A-1 et seq. of the West Virginia Code are exempt from ad valorem property taxation.

See W. Va. Code § 16-13A-21.

35.22.2 Bonds issued by public service districts for water and sewerage services established under Section 16-13A-1 et seq. of the West Virginia Code are exempt from ad valorem property taxation. See W. Va. Code § 16-13A-21.

35.23 The property, bonds, notes, debentures and other evidences of indebtedness of a housing authority established under Section 16-15-1 et seq. of the West Virginia Code are exempt from ad valorem property taxation. See W. Va. Code § 16-15-14.

35.24 Property of urban renewal authorities.

35.24.1 Property of an urban renewal authority created under Section 16-18-1 of the West Virginia Code is exempt from ad valorem property taxation. See W. Va. Code § 16-18-15(b).

35.24.2 The ad valorem property tax exemption for urban renewal authority property shall terminate when the authority sells, leases or otherwise disposes of any property used in a redevelopment project to a redeveloper for redevelopment. See W. Va. Code § 16-18-15(b).

35.25 Any property acquired or used by the Solid Waste Disposal Authority created under Section 16-26-1 et seq. of the West Virginia Code and the income therefrom and any solid waste disposal project and the bonds and notes issued by such authority and all interest and income thereon are exempt from ad valorem property taxation. See W. Va. Code § 16-26-19.

35.26 Property acquired or used by the West Virginia Turnpike Commission under the provisions of Section 17-16A-1 of the West Virginia Code and the income therefrom, and the bonds issued under the provisions of the aforesaid code sections, and the income therefrom are exempt from ad valorem property taxation. See W. Va. Code § 17-16A-14.

35.27 Revenue bonds issued for West Virginia University under Section 18-11-1 et seq. of the West Virginia Code and the interest thereon are exempt from ad valorem property taxation. See W. Va. Code § 18-11-25.

35.28 Revenue bonds for university capital improvements issued under Section 18-11A-1 et seq. of the West Virginia Code are exempt from ad valorem property taxation. See W. Va. Code § 18-11A-7.

35.29 Revenue bonds for university facilities, buildings and structures issued under Section 18-11B-1 et seq. of the West Virginia Code and the interest thereon are exempt from ad valorem property taxation. See W. Va. Code § 18-11B-11.

35.30 Revenue bonds for Marshall University capital improvements issued under section 18-12A-1 et seq. of the West Virginia Code are exempt from ad valorem property taxation. See W. Va. Code § 18-12A-7.

35.31 Revenue bonds for state institutions of higher education issued under section 18-12B-1 et seq. of the West Virginia Code and the interest thereon are exempt from ad valorem property taxation. See W. Va. Code § 18-12B-4.

35.32 Monies and property acquired by, retained by or used by the West Virginia Board of Regents or its agents under the provisions of the West Virginia Education Loan Bond Program under Section 18-27-1 et seq. of the West Virginia Code and the income therefrom are exempt from ad valorem property taxation. See W. Va. Code § 18-27-22.

35.33 All bonds issued by the Blennerhassett Historical Park Commission under the provisions of Section 29-8-1 et seq. of the West Virginia Code are exempt from ad valorem property taxation. See W. Va. Code § 29-8-10.

35.34 Any property acquired or used by the West Virginia Railroad Maintenance Authority, established under Section 29-18-1 et seq. of the West Virginia Code, and the income therefrom, and all bonds, notes and all interest and income thereon are exempt from ad valorem property taxation. See W. Va. Code § 29-18-19.

35.35 Property of any credit union organized under Section 31-10-1 et seq. of the West Virginia Code, or any other credit union act, except any real property and any tangible personal property owned by an such credit union, is exempt from ad valorem property taxation. Any real property and any tangible personal property owned by any such credit union is subject to taxation to the same extent as other similar property is taxed. See W. Va. Code § 31-10-33.

35.36 Any economic development project or any property acquired or used by the West Virginia Economic Development Authority, established under W. Va. Code § 31-15-1 et seq., and the income therefrom, and bonds and notes issued under Section 31-15-1 et seq. of the West Virginia Code and all interest and income thereon are exempt from ad valorem property taxation. See W. Va. Code § 31-15-20.

35.37 The West Virginia Housing Development Fund.

35.37.1 Property, other than real property, of the West Virginia Housing Development Fund, and obligations for other evidences of indebtedness and any monies, funds, revenues or other income held or received by the said Housing Development Fund, and the notes and bonds of the said Housing Development Fund and the income therefrom are exempt from ad valorem property

taxation. See W. Va. Code § 31-18-18.

35.37.2 All real property of the West Virginia Housing Development Fund is subject to ad valorem property taxation. See W. Va. Code § 31-18-18.

35.38 The West Virginia Community Development Authority.

35.38.1 All property, other than real property, of the West Virginia Community Development Authority, created under Section 31-19-1 et seq. of the West Virginia Code, and its obligations for other evidences of indebtedness issued pursuant to the provisions of Section 31-19-1 et seq. of the West Virginia Code and any monies, funds, revenues or other income held or received by the said community development authority and the income therefrom are exempt from ad valorem property taxation. See W. Va. Code § 31-19-20.

35.38.2 All real property of the Wet Virginia Community Development Authority is subject to ad valorem property taxation. See W. Va. Code § 31-19-20.

35.39 Licensed fraternal benefit societies.

35.39.1 Property, except real property and office equipment, of fraternal benefit societies licensed under Section 33-23-1 et seq. of the West Virginia Code is exempt from ad valorem property taxation. See W. Va. Code § 33-23-9(b).

35.39.2 All real property and office equipment of fraternal benefit societies licensed under Section 33-23-1 et seq. of the West Virginia Code is subject to ad valorem property taxation. See W. Va. Code § 33-23-29(b).

35.40 Property of hospital service corporations, medical service corporations and dental service corporations created in accordance with Section 33-24-1 et seq. of the West Virginia Code are exempt from ad valorem property taxation. See W. Va. Code § 33-24-4.

35.41 The property of all health care corporations created in accordance with Section 33-25-1 et seq. of the West Virginia Code is exempt from ad valorem property taxation. See W. Va. Code § 33-25-5.

35.42 Although the West Virginia Insurance Guaranty Association, created under Section 33-26-2 et seq. of the W. Va. Code, is exempt from payment of most fees and taxes levied by this State and its subdivisions, real and personal property of the said association is subject to ad valorem property taxation. See W. Va. Code § 33-26-15.

35.43 Although the West Virginia Life and Health Insurance Guaranty Association, created under Section 33-26A-1 et seq. of the West Virginia Code,

is exempt from most fees and taxes levied by this State and its subdivisions, all real property of the said association is subject to ad valorem property taxation. The personal property of the said association is exempt from ad valorem property taxation. See W. Va. Code § 33-26A-16.

PUBLIC COMMENTS TO THE EXEMPTION OF PROPERTY FROM
AD VALOREM PROPERTY TAXATION

The following are the public comments received on the Exemption Of Property From Ad Valorem Property Taxation regulations. These regulations were originally filed as proposed regulations in December, 1986; a public comment period was held at that time and public comments were received. When these regulations were again filed in July, 1988, another public comment period was held; additional public comments were received. The public comments received from both public comment periods are included and designated as either 1986 or 1988. The comments listed are not a word-for-word recitation of those received; rather, what is provided here is a synthesis of that received. The comments are followed by a brief statement of the Tax Department's response to the issue raised.

COMMENT (1986): There is no need for the regulation.

RESPONSE: State ex rel. Cook v. Rose, 299 S.E.2d 3 (W. Va. 1982) requires the State Tax Commissioner to issue clear and specific regulations and guidelines to assist assessors in determining questions of exemption from ad valorem property taxation. As there are no such regulations currently in effect, we are now complying with the directive issued by the Supreme Court of Appeals.

Furthermore, additional judicial activity appears to be in the offing. By issuing these regulations, the amount of such activity should be reduced; also, there should be a reduction in the amount of confusion on the part of assessors when deciding questions of exemption from property taxes.

COMMENT (1986): The issue of exemption from property tax should be determined on the basis of the Internal Revenue Service designation of the organization being classified as either a Section 501(c)(3) or (4) organization.

RESPONSE: When an organization is classified as being an exempt organization under either Section 501(C)(3) or 501(c)(4) of the Internal Revenue Code, the organization is exempt from federal income taxes. In contrast, West Virginia Constitution article X, section 1 authorizes the Legislature to exempt from ad valorem property taxes any property which is used for charitable purposes. (Emphasis added.) Neither the Constitution nor the statutes which implement the constitutional provision make reference to ownership by such an organization of the property in question when authorizing certain property to be exempt; the only issue is the use of the property. Therefore, for purposes of determining exemption from ad valorem property taxes, the Internal Revenue Service exemption classification is not conclusive to the question of use.

It also should be noted that W. Va. Code § 11-3-9 allows property belonging to a hospital not held or leased out for profit to be exempt. Section 9 must be read in light of the constitutional provision authorizing the charitable use exemption because that provision authorizes Section 9.

COMMENT (1986): The definitions of "non-profit" and "not-for-profit," as provided in Section 2.40, are overly narrow in that those terms would not allow any excess revenue, thereby resulting in a "hand-to-mouth" existence.

RESPONSE: The definitions of the terms in question were expanded to allow for profits which may be held or used for planned future use in furtherance of the charitable purposes of the organization.

COMMENT (1986): Under Section 24.4, there is a prohibition against allowing office space within the hospital to be provided free or at reduced cost to staff physicians in order to recruit them into the area.

RESPONSE: While we understand the problems associated with recruiting physicians, it must be understood at the outset that exemption must be based on the charitable use of the property. To say that the office space in which a physician engaged in the private practice of medicine (affiliated physician) is a charitable use is questionable at best. By the same token, office space made available to physicians who are actually employed by the hospital on at least a half-time basis (staff physicians) is the provision of an office to an employee and it is consistent with the charitable use concept; this envisions offices for radiologists, anesthesiologists and other hospital-based physicians.

Section 24.4 was rewritten to allow for the foregoing by defining "staff physicians" and "affiliated physicians," and then stating that the provision of office space to staff physicians is authorized. We feel the provision of free or reduced cost office space to affiliated physicians is beyond the constitutional authorization. It should be noted that if the hospital has a separate office complex in which physicians maintain their private practice of medicine, the tract of land and office complex must be divided from the hospital in order to maintain the hospital's exemption. This would be necessary because it could not be stated that an office complex housing many physicians who are maintaining their respective medical practices is property being used for charitable purposes.

COMMENT (1986): The term "hospital" does not allow for satellite facilities or emergency care facilities.

RESPONSE: The term "hospital" was expanded to include such a facility if the facility is actually owned by a charitable hospital, is operated on a charitable basis and is primarily used for the patient care activities which are specified. See Section 24.7.3. The distinctions are necessary to prevent abuse of the exemption;

i.e., where some physicians may be operating an emergency care facility on a profit-making basis.

COMMENT (1986): Section 24.8 provides a right of free care to all, regardless of ability to pay or the financial situation of the hospital.

RESPONSE: Section 24.8 was substantially amended to in part require that:

(1) charity care be provided in accordance with a charity care plan which must be developed by the hospital's board of trustees;

(2) the charity care provided under the plan be provided at a level consistent with the charitable classification of the hospital;

(3) free and below-cost medical care may be provided at a level consistent with the hospital's actual financial ability;

(4) charity care does not include bad debts;

(5) a hospital may not require evidence of ability to pay the medical bills incurred in order for a person to receive emergency medical care or medical care for treatment of a life threatening condition;

(6) the charity care requested must be medically appropriate and routinely provided by the hospital.

It is felt that by allowing each hospital to develop its own policy defining the level of charity care it will provide, the hospital must provide care to those who fall within the policy or those who require emergency medical care or medical care to treat a life threatening condition. Additionally, the financial ability of the hospital may be taken into consideration when determining the level of charity care to be provided. It is important to remember that the exemption from property tax is based upon the charitable use of the hospital. The charitable use required is best determined by the charitable care provided.

COMMENT (1986): Section 24.9 is felt to be overly restrictive in that it disallows leased areas in the hospital to be in excess of 10% of the available floor space on the floor where the activity is located, in that the disallowance of private gain might prohibit arms-length transactions, in that the payment of salaries which are comparable to those paid for similar services in the community would severely hinder personnel recruitment, and in that employee incentive plans and bonuses are prohibited.

RESPONSE: In reviewing the comments, it was felt that the 10% limitation, as stated, may have been overly restrictive. Upon consideration, it was felt that the greatest percentage of available space in the hospital would normally be designated for patient rooms with the remainder involving activities such as the business office, surgery areas, pharmacy, gift shop, etc. Because of the nature of

the many activities, it was determined that instead of limiting leased activities to 10% of the available floor space on the floor where the activity is located, the limitation should be based on the total available floor space in the hospital; as a result, leased operations may now not exceed more than 10% of the total available floor space in the hospital. This allows such activities to be located on one floor or throughout the hospital. It must be noted that even though the hospital may not be operating a leased area for profit, the lessee of the area in question, and who also would be the "owner" of the activity occurring thereon, would probably be considered as a for-profit organization and not as a charitable organization; such an organization would not otherwise be exempt. As all lessees would benefit from the hospital's exempt status, the total amount of area available for such activities must be kept at a minimum. Because the area of non-charitable use must be de minimis in order to not disturb the exemption of the hospital, the 10% limitation was developed.

Also valid was the complaint that arms-length transactions could be prohibited. As a result, a proviso was added which allowed payments for the receipt by the hospital of reasonable goods and services which are provided under valid arms-length transactions.

Another criticism was that the limitation that salaries were to be comparable to those paid for similar services in the community would have a detrimental effect on recruiting medical personnel. It was felt that some type of standard was needed to prevent a situation where salaries might be used to siphon funds or some similar activity. However, in recognition that a larger area may be necessary when developing comparable hospital operating statistics, the geographical limitation was changed by expanding the term "community" to be state-wide and that for salary comparison purposes, hospitals may use salaries paid at hospitals outside the State so long as those hospitals are not more than 100 miles from the borders of the State. As that area encompasses some very substantial metropolitan areas, there should not be problems with recruiting personnel.

In response to the criticism that the regulations prohibit the payment of bonuses and similar employee incentive plans, we agree that such actions are not necessarily inconsistent with the charitable use basis for the exemption where it is shown that they are not merely a device for diverting profits and that they contribute directly and immediately to the charitable purpose.

COMMENT (1986): Section 24.10 is overly broad in application in that it allows access to the hospital by any physician, regardless of qualification or competence.

RESPONSE: We felt this comment was valid. Section 24.10 was amended to allow competency and qualification to be determined in accordance with appropriate published hospital by-laws, policies, etc.

COMMENT (1986): Section 24.12 limits the use of unrestricted gifts and requires the provision of medical care to all who request, without consideration being given to the hospital's financial condition.

RESPONSE: There may be some validity to the concern expressed over the limitation on the use of unrestricted gifts. While we feel that the primary emphasis on the use of such gifts should be the provision of charity care, we realize there may be a necessity to utilize a portion of such funds to assist in purchasing needed equipment. Section 24.12 now authorizes for such purchases the use of up to 50% of the unrestricted gifts available and otherwise not budgeted at the beginning of the hospital's fiscal year. However, because hospitals seem to feel that sufficient funds are not available for charity care purposes, it is our contention that unrestricted gifts should first be designated for such purposes. It should be noted that this section does not prevent the investment of unrestricted gifts so long as the proceeds from such investments are used for charity care; after all, charitable use is the basis for the exemption. Finally, restricted gifts may be used only for the designated purpose.

Insofar as Section 24.12 relates to the provision of care to those who so request, the regulations now provide that the hospital must have the financial ability to provide such care.

COMMENT (1986): Section 24.15 requires vacant land owned by a hospital to be subject to tax.

RESPONSE: It must be noted that the Constitution authorizes exemption when property is used for exempt purposes. Furthermore, the use contemplated must be primary, direct and immediate, not secondary or remote. See State ex rel. Farr v. Martin, 105 W. Va. 600, 143 S.E. 356 (1928); Central Realty Co. v. Martin, 126 W. Va. 915, 30 S.E.2d 720 (1944). As vacant land is not being primarily and immediately used for exempt purposes, it therefore must be subject to taxation. The exemption may not be authorized until the exempt use actually commences.

COMMENT 1986: Hospital owned housing provided to hospital personnel should be exempt under Section 24.16.

RESPONSE: We agree to the extent that the housing is located on the same tract of land as the hospital and it can be proven that the housing is being used in a way which directly and immediately relates to the charitable purposes.

COMMENT (1986): Hospital owned housing used for student residences should be exempt under Section 24.17.

RESPONSE: While we disagree with the comment, it should be noted that such property may be exempt elsewhere in the regulations. The distinction is necessary because the property would not be used for charitable purposes; therefore, it would not have the charitable use

exemption available. It may be subject to the education use exemption.

COMMENT (1988): There is no basis for filing the regulations as emergency regulations.

RESPONSE: This issue is moot in that the emergency status of the regulations was withdrawn.

COMMENT (1988): The nature of the office space available to physicians should be clarified.

RESPONSE: Additional clarification has been provided by further defining "staff physician" and expanding the types of space which may be made available to all physicians. There is nothing in the regulations which prohibit the hospital from contracting with and providing office space for certain hospital-based physicians such as radiologists, pathologists and emergency room physicians.

COMMENT (1988): The hospital must be able to determine those most in need of charity care and to limit the utilization of charity care services to necessary services, and it should not be required to notify each uninsured person of its charity care policy.

RESPONSE: Section 24.8.1 requires each hospital to develop a charity care policy to govern the provision of charity care. Furthermore, Section 24.8.4 requires a hospital to provide free and below cost service to those unable to pay, and the provision of such service is to the extent of the hospital's actual financial ability and it must be consistent with the hospital's charity care policy. It is apparent from the foregoing that a hospital possesses great flexibility in developing its charity care policy and determining its actual financial ability to provide such services.

The Tax Department is in agreement that hospitals should be able to limit the utilization of charity care to necessary services; however, it must be noted that necessary services are more than emergency services required for the care of a life threatening condition. It is incumbent upon the hospitals to define in the respective charity care policies the nature of the services which will be provided.

While it is true that not every uninsured person is a candidate for free or below cost medical care, there is a question as to just how a qualified person will be made aware of the availability of such care. Notification of the availability of such care should not be equated with the provision of such care in every instance. The question of qualification should be addressed in the hospital's charity care policy.

COMMENT (1988): In order to be competitive, salaries must be comparable on a nationwide basis, not just within 100 miles of the West Virginia border.

RESPONSE: While it is true that the recruitment of personnel occurs on a nationwide basis, it must be noted that other major hospitals in the neighboring states are similarly situated. In effect, West Virginia is part of a region and that region is one of many which comprise the nation. As the other hospitals in the region undoubtedly will attempt to remain competitive on a nationwide basis, it is only necessary for West Virginia to remain competitive within the region.

Section 24.9.2 authorizes for salary comparison purposes the use of salaries paid at hospitals which are located no more than 100 miles from the West Virginia border. In effect, this expands the borders of West Virginia 100 miles and includes Washington, D.C., Pittsburgh, Cleveland, Columbus, and possibility Cincinnati. Surely, if West Virginia salaries are comparable with those metropolitan areas, they will be comparable on a nationwide basis. Furthermore, it also must be noted that salaries used in any comparison are not restricted to those paid at non-profit hospitals; the regulations by implication allow the use of salaries paid at for-profit institutions.

COMMENT (1988): Any surplus of revenue over expenses must be available for other than just charitable uses.

RESPONSE: Section 24.9.3.2 has been amended to authorize the use of surplus funds for purposes which carry out the hospital's charitable activities.

COMMENT (1988): Hospitals must be able to exclude physicians who do not meet competency requirements and qualifications.

RESPONSE: The Tax Department agrees with this comment. All that is required is that a hospital establish and publish its by-laws, policies, etc., and that any question of competency or qualification be determined in accordance with those documents.

COMMENT (1988): Rather than being required to use revenues solely for the maintenance of the hospital, a hospital should be allowed to enter into joint ventures or other business opportunities.

RESPONSE: At issue is the question of just how far may a hospital go in its business activities and still retain its charitable exemption. Sections 24.9.3.2 and 24.11.2 have been amended to provide additional clarification.

COMMENT (1988): A hospital should have greater freedom in determining the use of voluntary unrestricted contributions.

RESPONSE: The Tax Department is of the opinion the regulations strike a proper balance in regard to voluntary unrestricted contributions. Restricted contributions are used for the purpose for which they were donated. Unrestricted contributions are to be used for free and below cost care; however, if necessary, a portion can be used to assist in purchasing needed equipment.

While this does not place a cap upon the amount of free and below cost care provided by a hospital, it does provide funds which may be used for that purpose.

COMMENT (1988): Hospitals should not be required to establish and maintain records which demonstrate the creation and notification of the existence of the charity care policy, and the requests and disposition of requests for free and below cost care.

RESPONSE: The basis for the property tax exemption is the charitable use of the property in question. What better way to prove charitable use than through the maintenance of appropriate records.

COMMENT (1988): A hospital should be eligible for property tax exemption as long as the property is being used on a non-profit basis.

RESPONSE: West Virginia Constitution Article X, § 1 only authorizes exemption for charitable use, not non-profit use.

COMMENT (1988): Hospital owned housing or housing provided to hospital personnel should be exempt if operated on a non-profit basis.

RESPONSE: Absent a clear operational necessity, the charitable purpose of such a policy would be highly questionable. It would allow a hospital to purchase expensive homes which would be rented to hospital personnel. This would not be considered as a charitable use. Insofar as dormitory facilities for students are concerned, an exemption is available if the facilities can qualify under Section 21.

COMMENT (1988): Rather than emphasizing the rendering of medical care to those unable to pay when determining questions of charitable use, recognition should be given to the concept of community benefit which may be based on the following: (1) Medical staff membership possible for qualified physicians consistent with size and nature of hospital facilities; (2) Provision of care to all persons in the community who could pay either directly or through third party reimbursement; (3) Promotion of the health of a class of persons broad enough to benefit the community; and (4) conduct of affairs to serve a public rather than a private interest.

RESPONSE: The medical staff membership concern is already addressed in subsection 24.10 wherein authority is provided for limiting medical staff based upon the service needs of the hospital. Additionally, subsection 24.1.2 prohibits the use of a charitable hospital for private gain. The Tax Department is of the opinion that the limitations provided in the regulations are consistent with the proper operation of a charitable hospital.

The Tax Department does not agree that a charitable hospital may provide medical care to only those who are able to pay and still retain its exemption from property taxes. The effect of such a concept may be to authorize the denial of medical care for those

unable to pay. By the same token, the promotion of the health of a class of persons may very well result in the reduction or elimination of health care for the class of people who are unable to pay for the medical care provided. Both concepts are not consistent with the idea of using property for charitable purposes.

COMMENT (1988): The regulations require the maintenance of records which are duplicative of those required by the West Virginia Health Care Cost Review Authority.

RESPONSE: The regulations were amended to provide that hospitals need not maintain duplicate records which provide the information required if the information is already maintained by the hospital and on file with HCCRA.

COMMENT (1988): Section 24.3 does not indicate the disposition of property which one tax exempt entity leases from another.

RESPONSE: It is the use of the property, not the nature of the lessor and the lessee, which determines whether the property is exempt from property taxes. Property should be classified as exempt when it is used for charitable purposes. However, property not used for charitable purposes should not be exempt, regardless of who owns or leases the property, unless another exemption is applicable.

COMMENT (1988): Section 24.9 is too restrictive in that it disallows members of the board of trustees from doing business with the hospital.

RESPONSE: The proviso in Section 24.9.1 authorizes such persons to provide reasonable goods and services under valid arms-length contracts.

COMMENT (1988): Section 24.11 should authorize the use of hospital revenues to be used for the furtherance of charitable activities.

RESPONSE: Subsection 24.11.2 was amended to incorporate the uses provided in Subsection 24.9.3. Subsection 24.9.3.2 was amended to authorize the expenditure of revenues for the purpose of carrying out the hospital's charitable activities.

COMMENT (1988): The regulations present a balanced approach between competing interests.

RESPONSE: The Tax Department agrees.

DATE: SEPTEMBER 9, 1988

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: MICHAEL E. CARYL
STATE TAX COMMISSIONER

LEGISLATIVE RULE TITLE: EXEMPTION OF PROPERTY FROM AD VALOREM PROPERTY TAXATION

1. Authorizing statute(s) citation: W. Va. Code §§ 11-3-9

2. a. Date filed in State Register with Notice of Public Comment JULY 1, 1988

   b. What other notice, including advertising, did you give of the hearing? None

   c. Date of public comment period: July 1, 1988 - 5:00 p.m., July 31, 1988

   d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

   Attached X No comments received _____

   e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

   September 9, 1988

   f. Name and phone number of agency person to contact for additional information: John Montgomery - 348-5330

FISCAL NOTE FOR PROPOSED RULES

FILED

1990 SEP 19 AM 10:50

OFFICE OF SECRETARY OF STATE

Rule Title: Exemption of Property From Ad Valorem Property Taxes

Type of Rule: X Legislative ____ Interpretive ____ Procedural

Agency: Tax Department Address: State Capitol; Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL Increase	ANNUAL Decrease	FISCAL YEAR Current	FISCAL YEAR Next	FISCAL YEAR Thereafter
Estimated Total Cost	$	$	$	$	$
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates:

The rule should have no cost effect because it does not envision any expenditures.

3. Objectives of these rules:

The objective of the rule is to provide guidelines which will assist assessors in determining questions of exemption from ad valorem property taxation.

CHARLESTON AREA MEDICAL CENTER
1210 Elmwood Avenue • P. O. Box 1547
Charleston, West Virginia 25326 • 304/348-7627

January 27, 1987

Mr. Michael E. Caryl
Tax Commissioner
State Tax Department
State Capitol
Charleston, West Virginia 25301

RE: Proposed Legislation Relating to Exemption of Property from Ad Valorem Property Taxation

Dear Mr. Caryl:

I have reviewed the proposed WV Administrative Regulations, Chapter 11-3, Series III, relating to the exemption of property from ad valorem property taxes, filed by the State Tax Department on December 5, 1986. The purpose of this letter is to express some of the concerns which I share with other members of Charleston Area Medical Center's Executive Management Group, including the CAMC Board of Trustees, in reference to the proposed regulations. My concerns relate specifically to the regulations which have a direct impact upon the retention of the ad valorem tax exemption of non-profit hospitals. The areas which I am requesting be evaluated are as follows:

1. Section 4.40: Definition of Non-Profit.

   Section 4.40 defines the terms "non-profit" and "not-for-profit" as "used with a view to producing no profit on total aggregate operations." The definition goes on to allow the exacting of charges from beneficiaries and deriving profits from beneficiaries on a case by case basis "so long as total aggregate annual operations produce no significant private gain." The two quoted phrases are inconsistent and make the definition ambiguous. However, the language "used with a view to producing no profit on total aggregate operations" is particularly bothersome and should be deleted. Non-profit institutions must produce an excess of revenues over expenditures to be viable. In the case of non-profit hospitals, the West Virginia Health Care Cost Review Authority specifically recognizes the propriety of a non-profit hospital achieving a reasonable excess of revenues over expenditures in order for the institution to be able to develop programs, replace equipment and to be able to operate on other than a "shoe string" basis. While we agree that there should be "no significant profit gained" connected with non-profit institutions, the definition goes far beyond that limitation and should be substantially revised.

2. Section 23.8: Admissions and Ability to Pay.

Section 23.8.5 states that a hospital will not be considered charitable and, therefore, will not be granted tax exempt status if it does not provide free and below cost services to all who request medical care but are unable to pay for it. I am of the opinion that hospitals should be allowed to impose reasonable restrictions for care which is to be provided either free or below cost. There are occasions when the hospital is operating at near or full capacity and is, therefore, limited in accepting additional patients. Financial limitations could also hinder a hospital from providing care to all indigent persons who ask for care. Although CAMC would always like to be able to provide charity care to all who request it, capacity and financial limitations could at certain times prevent them from doing so. Also, this type of requirement has the potential for encouraging "economic transfers" from for-profit hospitals to not-for-profit hospitals. Since current regulations under COBRA prohibit such action by all institutions participating in Medicare, this section would seem to be unnecessary!

3. Section 23.9.1a: Leased Areas for Necessary Segments of Normal Hospital Operations.

This section states that leased areas to private businesses for the purpose of furnishing necessary segments of the normal hospital operation shall not be more than 10% of the available floor space on the hospital floor where the leased area is located. If the hospital has several floors, they might wish to have all such leased areas centrally located on one floor as a matter of convenience, especially for those patients which might be physically handicapped. I am requesting that consideration be given to amending this section to include a limitation on the total amount of space which can be leased in the entire hospital building to private businesses rather than limiting the space on each floor.

4. Section 23.9.2: Salaries of Personnel.

This section states that the salaries paid to employees and staff members must not be excessive when compared to other salaries for similar services in the community. Since hospitals are a specialized business and compete on a nationwide basis for qualified executive and administrative personnel, I feel it would be more appropriate for hospitals to be allowed

to compare salaries on a nationwide rather than on a local basis. Such an amendment would permit hospitals more leverage in recruiting and obtaining better personnel. Additionally, this establishes a very subjective standard with no guidelines and will undoubtedly lead to substantial litigation if enforcement were attempted.

5. Section 23.9.3: Free Office Space.

This regulation appears to require that if free office space is offered to one physician, it must also be set aside for all physicians on the staff. A hospital could easily have more demand from staff physicians for free office space than what they physically have available. Again, this standard is unreasonable. In effect, it requires that no space be provided for any physician. This section should be eliminated.

6. Section 23.9.4: Salary, Bonuses and Gifts.

This section prohibits the payment of any surplus operating funds to employees in the form of salary bonuses. The payment of minor salary bonuses to employees in order to reward them for their services is a customary practice in the healthcare industry. This standard severely restricts management's ability to reward outstanding performance. It also attempts to direct hospital wage and salary programs in a way which will make it more difficult to retain top caliber talent in West Virginia. This section should be deleted or substantially revised to allow bonuses.

7. Section 23.10: Open Medical Staff.

This section prohibits a hospital from restricting the access of any physician licensed to practice medicine in West Virginia to the use of hospital facilities. The proposed regulation further states that a hospital may restrict its medical staff to a limited number of members, based upon the service needs of the hospital. The hospital feels a deep responsibility in providing patients with competent physicians who are well qualified and who maintain a good standing in their field of practice. The hospital could jeopardize its ability to obtain malpractice liability insurance if they are required to open their staff to physicians whose past practices have demonstrated that they are poorly qualified and not competent to render care in accordance with the standards of the hospital. Furthermore, in order for the hospital to offer quality care to its patients

and obtain malpractice insurance, I feel they should be permitted to require that staff members participate in risk management and quality assurance programs. This section restricts the hospital's ability to control quality of practice in its facilities and should be deleted.

8. Section 23.12: Restrictions on Use of Voluntary Contributions.

This section limits the permissible uses of voluntary contributions to patient care, equipment, and capital improvements. Additionally, funds received from unrestricted voluntary contributions are required to first be used to provide services either free or below cost. Restrictions such as these on the use of the contributions could result in a decrease in the contributions received. Oftentimes, donors make contributions and specifically state their requested use of such funds, some of which do not meet the requirements outlined in this section. I am not particularly opposed to the requirement that unrestricted contributions be used first to provide free or below cost services, but I do not feel limitations should be placed on the use of restricted contributions when such contributions are not made for patient care, equipment, and capital improvements.

Please accept this as my request to the State Tax Department for the above sections relating to the proposed legislation to be evaluated and considered for revisions or clarification.

I sincerely appreciate your consideration of my comments in reference to the proposed legislation, which I am making on behalf of Charleston Area Medical Center and other non-profit hospitals providing services to their respective communities within the State of West Virginia.

Sincerely,

Phillip H. Goodwin, F.A.C.H.E.
Executive Vice President

PHG:eaj

CHARLESTON AREA MEDICAL CENTER
Brooks and Washington Streets • P. O. Box 1547
Charleston, West Virginia 25326

February 12, 1987

John Montgomery, Esquire
Senior Technical Attorney
West Virginia State Tax Department
Post Office Drawer 2389
Charleston, West Virginia 25328

Re: Comments by Charleston Area Medical Center, Inc. ("CAMC") as to Proposed Rule on Property Tax Exemptions

Dear Mr. Montgomery:

Charleston Area Medical Center, Inc. commented on the referenced proposed rule in the form of a letter dated January 27, 1987 from Phillip H. Goodwin, CAMC's Executive Vice President. In reviewing that correspondence, I noticed a mistake which I would like to have corrected. On the first page of the letter, on the third line from the bottom, the phrase "no significant profit gained" was intended to read "no significant private gain."

Enclosed is a revised first page of the letter, which I hope you will accept in lieu of the original first page of the letter. If you have any questions, please give me a call.

Very truly yours,

Marshall A. McMullen, Jr.
General Counsel

MAM,jr:cbh

Enclosure

CHARLESTON AREA MEDICAL CENTER
1210 Elmwood Avenue • P. O. Box 1547
Charleston, West Virginia 25326 • 304/348-7627

January 27, 1987

Mr. Michael E. Caryl
Tax Commissioner
State Tax Department
State Capitol
Charleston, West Virginia 25301

RE: Proposed Legislation Relating to Exemption of Property from Ad Valorem Property Taxation

Dear Mr. Caryl:

I have reviewed the proposed WV Administrative Regulations, Chapter 11-3, Series III, relating to the exemption of property from ad valorem property taxes, filed by the State Tax Department on December 5, 1986. The purpose of this letter is to express some of the concerns which I share with other members of Charleston Area Medical Center's Executive Management Group, including the CAMC Board of Trustees, in reference to the proposed regulations. My concerns relate specifically to the regulations which have a direct impact upon the retention of the ad valorem tax exemption of non-profit hospitals. The areas which I am requesting be evaluated are as follows:

1. Section 4.40: Definition of Non-Profit.

   Section 4.40 defines the terms "non-profit" and "not-for-profit" as "used with a view to producing no profit on total aggregate operations." The definition goes on to allow the exacting of charges from beneficiaries and deriving profits from beneficiaries on a case by case basis "so long as total aggregate annual operations produce no significant private gain." The two quoted phrases are inconsistent and make the definition ambiguous. However, the language "used with a view to producing no profit on total aggregate operations" is particularly bothersome and should be deleted. Non-profit institutions must produce an excess of revenues over expenditures to be viable. In the case of non-profit hospitals, the West Virginia Health Care Cost Review Authority specifically recognizes the propriety of a non-profit hospital achieving a reasonable excess of revenues over expenditures in order for the institution to be able to develop programs, replace equipment and to be able to operate on other than a "shoe string" basis. While we agree that there should be "no significant private gain" connected with non-profit institutions, the definition goes far beyond that limitation and should be substantially revised.

CHARLESTON AREA
MEDICAL CENTER, INC.
LEGAL SERVICES
P.O. BOX 1547
CHARLESTON, WV 25326

FIRST CLASS MAIL

CHARLESTON AREA MEDICAL CENTER
LEGAL SERVICES
P.O. BOX 1547
CHARLESTON, WV 25326

TO: John Montgomery, Esquire
Senior Technical Attorney
West Virginia State Tax Department
Post Office Drawer 2389
Charleston, West Virginia 25328

FIRST CLASS MAIL

WEST VIRGINIA HOSPITAL ASSOCIATION

January 30, 1987

Commissioner Michael E. Caryl
State Tax Department
State Capitol
Charleston, West Virginia 25301

Re: Proposed Legislative Regulations
For Exemption of Property From
Ad Valorem Property Taxes

Dear Commissioner Caryl:

The West Virginia Hospital Association is pleased to receive this opportunity to comment on proposed regulations issued by your office on December 5, 1986.

West Virginia hospitals have a strong record in providing uncompensated care to the communities these hospitals serve. In 1982, our hospitals provided $66 million worth of uncompensated care, representing 5.9% of gross patient revenues. In 1985, this figure increased to $102 million which represents 7.8 per cent of gross patient revenues. Nationally, uncompensated care represented only 5.8 per cent of gross patient revenues. Further, in 1985 and 1986, West Virginia hospitals were the only hospitals in the United States who relieved the burden of state government by contributing six million dollars to West Virginia for medicaid.

Based on this favorable record of charitable activity, please consider our review and comments on behalf of 98 per cent of all not for profit hospitals in the state of West Virginia.

3422 Pennsylvania Avenue Charleston, West Virginia 25302 (304) 345-9842

I. THE PROPOSED STANDARD FOR HOSPITAL ADMISSIONS AND ABILITY TO PAY IS INAPPROPRIATE AS A PRACTICAL MATTER AND UNDULY RESTRICTS THE CONCEPT OF CHARITY

Section 23.8 of the proposed regulations entitled "Admissions and ability to pay" lists criteria pertaining to free and below cost care which must be furnished by hospitals to qualify as a charitable activity. The importance of this section is immediately apparent. Section 23.8.2 notes that the policy of a hospital relating to admission of patients unable to pay for medical care and treatment is "the most important single element" in the charitable determination. Section 23.8.5 specifically recites:

> "A hospital will not be considered charitable and, therefore, will not be granted tax exempt status if it does not provide free and below cost services to all who request medical care but are unable to pay for it."

This important standard literally interpreted could cause a charitable hospital to self liquidate because the requirement for provision of free and below cost care is unqualified.

Although it is recognized that federal standards concerning qualification of hospitals as tax exempt activities are not binding upon the West Virginia Tax Commissioner, an examination of the history of free care requirements is both relevant and instructive. To this end, two IRS Revenue Rulings are now discussed.

Revenue Ruling 56-185, 1956-1 C.B. 202 required consideration of a number of factors to determine charitable status, including the provision that a hospital:

> "must be operated to the extent of its financial ability for those not able to pay for the services rendered and not exclusively for those who are able and expected to pay."

Emphasis supplied. This rule was generally interpreted to require a hospital to devote some unquantified amount of its services to the indigent either at no cost or below cost. At no point has this portion of Revenue Ruling 56-185 been construed to mean that a hospital to be charitable has an open ended requirement to treat all persons who are unable to pay. Significantly, this free care or below cost requirement was modified by Revenue Ruling 69-545, 1969-2 C.B. 117 "to remove therefrom the requirements relating to caring for patients without charge or at rates below cost."

Thus, the unqualified requirement that hospitals provide free or

below cost care to all persons unable to pay has never been a federal requirement for a hospital to qualify for tax exemption purposes. At best, the rendition of free care was only one of several factors considered. Even when a free care requirement existed under Revenue Ruling 56-185, the financial ability of the hospital was an important limitation modifying compliance.

As the proposed rules of section 23.8 illustrate, a literal application of the unbridled requirements of free care to all who qualify will, in the long run be counterproductive in that:

(a) If literally applied, the hospital could lose ability to care for any patients including the indigent or provide such care in less than a quality manner because of compromising financial considerations.

(b) Because of the emphasis placed on this requirement by the tax commisssioner, the common good may suffer in that hospitals will have a disincentive to conduct other activities for public benefit.

The free care requirements essentially relate back in history to the model of a hospital as an almshouse or free shelter for a portion of society. This in fact was the traditional and now outdated concept of the hospital as a charitable entity. As one

court concluded:

> "It appears that the rationale upon which the limited definition of 'charitable' was predicated has largely disappeared. To continue to base the 'charitable' status of a hospital strictly on the relief it provides for the poor fails to account for . . . major changes in the area of health care."

Eastern Kentucky Welfare Rights Organization v. Simon, 506 F.2d 1278 (D.C. Cir. 1974) at 1288, vac. other grounds, 426 U.S. 26, 48 L. Ed.2d 450 (1976).

Other courts have also concluded that the traditional charity standard for hospitals has changed. Typical of such acknowledgment is the following:

> " However, we recognize too that major changes in the area of health care, especially in modes of operation and financing, have necessitated changes as well in definitional predicates. The term "charitable," as applied to health care facilities, has been broadened since earlier times, when it was limited mainly to almshouses for the poor. As a result, the promotion of health, whether through the provision of health care or through medical education and research, is today generally seen as a charitable purpose. A. Scott [Trusts 368, 372]; G.T. Bogert, Trusts & Trustees 374 (rev. 2d ed. 1977). Such a

purpose is separate and distinct from the relief of poverty, and no health organization need engage in "almsgiving" in order to quality for exemption."

Emphasis supplied. Harvard Community Health Plan v. Board of Assessors of Cambridge 427 N.E.2d 1159 (1981) at 1163.

Finally, federal Revenue Ruling 69-545, supra, recognizes the promotion of health in qualifying hospitals as charitable entities. In the words of the Internal Revenue Service,

> "The promotion of health, like the relief of poverty and the advancement of education and religion, is one of the purposes in the general law of charity that is deemed beneficial to the community as a whole even though the class of beneficiaries eligible to receive a direct benefit from its activities does not include all members of the community, such as indigent members of the community, provided that the class is not so small that its relief is not of benefit to the community."

Rev. Rul. 69-545, 1969-2 C.B. at 118.

It is paradoxical that the definition of charity contained in the proposed regulations at Section 4.10 (apparently taken from Michie's Jurisprudence Vol.3B at 245) should allow hospitals in

West Virginia to qualify as charitable entities under a promotion of health standard. To this end, the proposed definition of charity in Section 4.10 is in agreement with the basic principle that the law of charity must be responsive to changing circumstances and similarly, changing needs of the community. Unfortunately, the misplaced emphasis in demanding strict adherence to Section 23.8.5 of the proposed rules will result in a departure from and collision with the definition of charity at Section 4.10. This collision can be avoided by modifying the proposed regulations to allow for alternative standards, as cited above.

II. RELIANCE UPON OPEN MEDICAL STAFF REQUIREMENTS IS DANGEROUS, UNNECESSARY AND DETRIMENTAL TO THE COMMON GOOD OF BOTH HOSPITALS AND PATIENTS.

Proposed regulations at Section 23.10 would force hospitals to provide access to any physician "licensed to practice medicine in West Virginia" as part of the active medical staff of the hospital. Further, strict enforcement of this unfounded criteria is evident at section 23.10.2, which states in relevant part:

> "However, any restrictions . . . will be closely scrutinized in determining whether or not the hospital is exempted from ad valorem taxation."

This proposed requirement for an open medical staff again

indicates a misplaced reliance upon misunderstood federal requirements. Assuming without deciding that the purpose of this rule is to ensure that undue benefit from the use of hospital facilities does not enure to any group of physicians (which may occur in a closed medical staff situation motivated for professional self maintenance) adherence to this requirement will result in immediate and far reaching negative consequences.

It is realized that Revenue Ruling 56-185 contained a provision against a closed medical staff:

> "[An exempt hospital] must not restrict use of its facilities to a particular group of physicians or surgeons, such as a medical partnership or association, to the exclusion of all other qualified doctors. Such limitation on the use of hospital facilities is inconsistent with the public service concept inherent in Section 501 (c) (3) and the prohibition against the inurement of benefits to private shareholders or individuals."

Revenue Ruling 56-185,1956-1 C.B.202 (emphasis supplied). Significantly, the Revenue Ruling speaks to qualified medical staff applicants. To our knowledge, no state or federal court in any jurisdiction within the United States has upheld the desire of any physician to become a recipient of medical staff hospital privileges simply on the basis of licensure as a physician and

surgeon in the respective jurisdiction. This "right" at law simply does not exist. It is respectfully submitted that the commissioner should not attempt to create one.

The experience of Revenue Ruling 56-185 is instructive. A closed staff may not in itself be indicative of improper benefit to individuals. Unlike the stringent enforcement language contained in the proposed rule, it is noteworthy that the IRS has never revoked or denied exemption to a hospital solely due to a closed staff, nor has any federal court to date.

Indeed, the IRS and courts have recognized the need for appropriate credentialing of physicians and, denial of staff privileges where appropriate. In most jurisdictions, hospitals are held responsible for ensuring the competance of their medical staff applicants through a careful but fair selection process in order to prevent an unreasonable risk of harm to their patients. See for example Elam v. College Park Hospital 132 Cal. App. 3rd 332 (1982), Darling v. Charleston Community Memorial Hospital 211 N.E. 2d 253 (1965), cert. den. 398 U.S. 946, 16 L. Ed.2d209 (1966).

Hospitals have a duty to exercise reasonable care in selecting their medical staffs. This duty must be discharged in conformity with a standard of care. Hospitals are liable for damages to injured patients when such injuries are due to the hospitals' acts or omissions in this selection process. Johnson v. Misericordia Comm. Hosp. 301 N.W. 2d 156 (1981).

Neither case nor statutory law has ever given a licensed practitioner an absolute legal right to attain or retain medical staff membership or privileges in either a public or private, non-profit hospital. Yearagin v. Hamilton Mem. Hosp. 171 S.E. 2d 136 (1969), cert. den. 397 U.S. 963 (1970).

The proposed regulation promoting open medical staffs in West Virginia disregards inherent responsibility of hospitals and their medical staffs in safeguarding the patient care process and demolishes any meaningful quality assurance which both hospitals and physicians legally and ethically owe to their patients, and threatens the public welfare. If the rule is implemented all not for profit hospitals affected should lose their tax exempt status. This result will obtain since no hospital should knowlingly act to endanger their patients. Adoption of an open staff requirement as indicated in Section 23.10 would directly and proximately endanger patients. Additionally, compliance with Section 23.10 would result in:

(a) Loss of accreditation by the Joint Commission on Accreditation of Hospitals.

(b) The violation of federal medicaid and medicare requirements relating but not limited to peer review of the utilization and quality of health care services.

(c) The violation of the Peer Review Improvement Act, P.L. 99-660.

(d) The violation of Section 14.1.1 et seq. Licensure Standards for Hospitals promulgated as Legislative Rule 16-5B by the West Virginia Board of Health.

For all of the above reasons, Section 23.10 should be abolished.

III. THE PROPOSED ENCUMBRANCE UPON UNRESTRICTED VOLUNTARY CONTRIBUTIONS BEARS NO RATIONAL RELATIONSHIP TO FURTHERANCE OF THE PUBLIC GOOD.

The mandatory restriction contemplated upon unrestricted voluntary contributions is found in Section 23.12 at 23.12.1.a. These contributions:

> "must be used to provide free or below cost services before being used for any other purpose."

An unrestricted gift follows the intent of the donor that the gift may be used for any legally acceptable purpose contemplated by the donee. Nothing in West Virginia law supports such a restriction against the legitimate use of unrestricted gifts. The individuals best suited to determine the most beneficial application of such donations are the administration and the board

of trustees of the hospital. Mandating automatic application to free care deprives these hospital officials of their responsibility and duty to determine how these funds will be used consistent with maximum community benefit. Mature decisions may or may not result in primary application to free and below cost care. Depending upon all relevant facts and circumstances the funds may (and should) be spent on other activities such as new or replacement equipment which could be used for wide community benefit. The proposed rule unduly substitutes the judgment of the commissioner for the board of trustees and defeats the wishes of the donor.

IV. FREE OFFICE SPACE CRITERIA SHOULD BE MODIFIED FOR RECRUITMENT PURPOSES.

Section 29.9.3 recites, in a contradictory fashion, proposed requirements for free office space. Hospitals should be permitted to offer free office space to new members of their medical staff as a recruitment tool. Competition to attract qualified physicians to West Virginia occurs on a national basis. It is common practice for free office space to be offered in many other states as part of recruitment incentives. The proposed regulations are fashioned in such a manner as to defeat this limited enticement for West Virginia, by requiring the hospital in effect to provide free space for all physicians. The rule should be revised to allow hospitals to use a portion of their medical office buildings rental free to new physicians on a space available basis.

V. THE 10% LIMITATION IMPOSED ON LEASED AREAS FOR NECESSARY SEGMENTS OF NORMAL HOSPITAL OPERATIONS IS ARTIFICIAL AND ARBITRARY.

Section 23.9.1.a of the proposed regulations relating to "private gain or benefit" states in part:

> "Leased areas shall not be more than 10% of the available floor space on the floor of the hospital whereon the leased activity is located."

The basis for 10% limitation is unknown. Because this limitation is on a per floor basis, compliance with this section as written would require expensive structural change in many hospitals. Requiring a gift shop to be located on one floor, a pharmacy on a different floor and other leased components of necessary hospital operations on yet other floors can only result in inconvenience to the public, and an unnecessary hardship on the handicapped, and increased hospital costs.

VI. THE DEFINITION OF NOT FOR PROFIT ACTIVITIES IS UNNECESSARILY RESTRICTIVE, UNREALISTIC AND DOES NOT NOURISH OR ENCOURAGE CHARITABLE ACTIVITY.

Section 4.40, defining the terms non profit and not for profit mean:

"used with a view to producing no profit on total aggregate operations."

This standard literally applied would allow no excess of net revenue over expenses. As such, it evokes a hand to mouth existence for hospitals. Charitable activities in the last half century have consistently been permitted to realize a surplus of income in excess of expense. It is the use to which this surplus (if any) is put which should be at issue. Hospitals should be allowed to receive in aggregate a surplus of revenue over expense provided such surplus is used for the furtherance of charitable activities which may include but are not limited to provision of uncompensated services, replacement or acquisition of medical equipment or improvement of facilities or patient care activities which promote the public health, medical education or research, or in any other manner to benefit the public as a whole.

A review of applicable case law accross the United States clearly supports the proposition that a non profit hospital is permitted to realize a profit or surplus of revenue over expense to further charitable activity.

See: Scripps Memorial Hospital, Inc., v. California Employment Commission, 151 P.2d 109 (1944); Howard Community Health Plan, Inc., v. Board of Assessors, 427 N.E. 2d 1159 (1981); Mayo Foundation v. Commissioner 236 N.W. 2d 767 (1975); Jackson County v. State Tax Commission, 521 S.W. 2d 378 (1975) Community

Memorial Hospital v. Moberly 422 S.W. 2d 290 (1967); West Allegheny Hospital v. Board of Property Assessment 455 A. 2d 116 S.E. 2d 79 (1960). It is recommended that the rule in its present form be abolished.

CONCLUSION

The essence of charitable activity is meaningful contribution to the common good. This contribution may take many forms of identity. Relief of the burdens of government through qualified and reasonable free care activity is but one form of charity. Other legitimate and effective charitable forms exist.

An opportunity is present for the encouragement of charitable activity in West Virginia. The restrictive and hostile tone of these proposed regulations with unwarranted emphasis on single criteria becoming pass or fail determination in the exemption process (in lieu of a totality of facts and circumstances approach) does not encourage charitable activity.

Few if any non profit hospitals in West Virginia will be able to meet the criteria as presently drafted.

It is respectfully suggested that the regulations discussed above be modified in tone and content to reflect both reasonableness

and flexibility in order to encourage the continuation of charitable activity by hospitals in West Virginia.

G.F. DELAURA, ESQUIRE
VICE PRESIDENT/GENERAL COUNSEL

cc: THE HONORABLE ARCH A. MOORE, JR.

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OF COUNSEL
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STATE TAX DEPARTMENT
1987 FEB -9 PM 1:21
PROPERTY TAX DIVISION

WRITER'S DIRECT DIAL NUMBER
624-8171

January 30, 1987

CERTIFIED MAIL
Return Receipt Requested

State Tax Department
State Capitol
Charleston, WV 25305

Re: Proposed Rule on Exemption of Property
From Ad Valorem Property Taxation

Gentlemen:

On behalf of United Hospital Center, Inc. ("UHC"), a nonprofit, West Virginia corporation, #3 Hospital Plaza, Route 19 South, Clarksburg, West Virginia 26301, we make the following comments on the proposed Rule on exemption of property from ad valorem property taxation with particular emphasis on Sections 18 and 23 of the proposed Rule. UHC, a Section 501(c)(3) tax exempt entity, operates the only hospital in Harrison County, West Virginia. All individuals who approach UHC for medical care are afforded medical care and, if necessary, granted hospital admission, without regard to their ability to pay or whether or not their condition is or is not of an emergency nature. Any "surplus earnings" of UHC are used to further its charitable activities. This would include, without limitation, any net revenues derived by it from rental of office space to physicians. In other words, all surplus earnings of UHC are held only temporarily by it with such surplus earnings being dedicated and ultimately expended in its charitable activities. The expenditures often times take the form of renovation of facilities, replacement of equipment and the purchase of modern medical

equipment, all of which is necessary to provide the highest quality of medical care.

In order to successfully operate a hospital, an entity such as UHC, must attract qualified physicians and integrate, geographically and otherwise, such physicians into its operations. Consequently, UHC, as well as a number of other hospitals, have found it necessary to make available to physicians office space. Needless to say, UHC nor any other hospital can afford to absorb the sole cost of erection, operation and maintenance of such physician office building and UHC is thus required to generate revenue therefrom. If UHC absorbed the cost of the foregoing, it would be affording an undue economic benefit to a limited number of private individuals, which would be contrary to the nonprofit requirements in the proposed Rule and in the Federal income tax exemption rules and regulations. IRC Reg. §1.501(c)(3)-1(c)(2) and IRC Reg. §1.501(c)(3)-1(d)(1)(ii). To avoid the foregoing, UHC as well as other hospitals, require the physicians to pay for the use of the physician office building with the proceeds derived therefrom being used to pay for the cost of the building with any surplus revenues being expended for the charitable activities of UHC, which reduces the charges of UHC to its patients for its services. Although UHC is a nonprofit hospital, the laws of economics cannot be ignored. Nonprofit hospitals, such as UHC, cannot be expected to commit economic suicide to maintain their nonprofit status. The proposed Rule which provides that the leasing of hospital facilities to physicians for a rental is a prohibited act and at the same time provides that UHC, as a charitable entity, cannot confer an economic benefit upon an individual or group of individuals without an adequate consideration being paid to UHC is inconsistent. Even the Internal Revenue Service has ruled that a 501(c)(3) tax exempt hospital, such as UHC, may lease physician office facilities to physicians on an arm's length basis without negatively impacting its tax exempt standing. Rev. Rul. 69-463, 1969-2 C.B. 131, a copy of which is enclosed. In other words, UHC and other hospitals find themselves in an untenable position and any course of action taken by UHC will be viewed negatively under the proposed Rule.

As briefly mentioned above, without providing physicians a physician office building, UHC would be at a recruiting disadvantage and would not be able to maintain a quality medical staff. Without a physician office building, physicians who would practice at UHC would be required to build or otherwise obtain their own office facilities, which arrangements more likely than not, would not be compatable with or enhance the ability of UHC to provide medical care to its patients.

Without degradation to the comments made above, as to Section 23.9, UHC, like a number of other hospitals, has certain physician employees, such as pathologists and radiologists, and as is typical in most employer-employee situations, the employer, UHC, is required to make available to its employee physicians facilities in which to work without

charge to such employee physicians. At the very least, Section 23.9.3 should make a distinction between employee and nonemployee physicians so as to allow UHC to supply to employee physicians free office space without having to likewise supply free office space to nonemployee physicians.

The proposed open medical staff rules outlined in Section 23.10 of the proposed Rule are not workable. Section 23.10.2 of the proposed Rule provides that a hospital, such as UHC, may restrict its medical staff to a limited number of members based upon the service needs of the hospital. However, all restrictions of the hospital's medical staff will be closely scrutinized to determine whether or not the hospital is exempt from ad valorem taxation. UHC has never unfairly denied a physician duly licensed to practice medicine in West Virginia from using its facilities. However, because of certain managerial and other concerns, it is necessary for all physicians practicing at UHC to abide by certain rules and regulations. Section 23.10 of the proposed Rule would unreasonably restrict the ability of UHC to adopt medical staff rules and regulations and to amend those rules and regulations from time to time as required by the ever evolving hospital picture. The proposed Rule is an unjustified infringement upon the administration and management of UHC.

Because UHC is the only hospital in Harrison County, West Virginia, UHC has a greater responsibility than is normally encountered. To provide adequate and prompt medical services to outlying areas, UHC has found it necessary to establish and is currently in the process of building, a satellite medical facility in the Meadowbrook area of Bridgeport, Harrison County, West Virginia. Section 23.7 of your proposed Rule basically provides that facilities of this nature will not be recognized as hospitals and afforded an exemption from ad valorem property taxes. Such a provision will result in either the lack of satellite facilities to service outlying geographical areas or in a nonprofit hospital, such as UHC, being required to charge more for its services because of the higher cost imposed upon it for ad valorem property taxes.

In order to protect the integrity of a hospital facility and to allow for future growth, it is essential for a hospital, including UHC, to acquire and hold land adjacent to its current facility. The foregoing is done with the view to continue to provide satisfactory medical care to the area served by UHC and is not done out of entrepreneurial motives. The proposed Section 23.15 of the proposed Rule provides that vacant land will be subject to ad valorem taxation and is deemed not to be used for charitable purposes. This is unreasonable and unfair because, again, any hospital, including UHC, with a view towards the future must allow itself the opportunity to expand to meet the ever growing requirements of its patients.

UHC, like a number of other hospitals, has been subjected within the last 12 to 18 months to a significant additional cost arising out

of rocketing malpractice insurance premiums and at the same time decreasing revenues because of Medicare and Medicaid restrictions. The implementation of the proposed Rule on exemption of property from ad valorem property taxation may result in additional significant costs being imposed upon UHC, which will require UHC either to curtail the medical services which it provides or to increase the charges which it must make for such medical services. Unfortunately, an increased charge for medical services would not be for a cost which would enhance the medical services, but would be a cost for cost sake only. The geographical area which UHC serves can ill afford the foregoing.

On January 29, 1987, the undersigned contacted the Honorable Michael E. Caryl to discuss with him the timeliness of filing the above comments. Commissioner Caryl advised that the forwarding of these comments in an envelope bearing a postmark date of January 30, 1987, would be timely.

Very truly yours,

William T. Belcher

WTB/sdo

cc: Mr. Sam Tiano (w/encl.)
Irene M. Keeley, Esq. (w/encl.)
Gil DeLaura, Esq. (w/encl.)

investments, but changes, redemptions, maturities, and accumulations caused limited shiftings in his portfolio. The basis for the Court's holding was that the taxpayer's activities with respect to the investments were primarily passive in nature, in that he merely kept books and collected dividends and interest.

In the instant case, as in the *Higgins* case, the trust's receipt of income is also primarily of a passive nature. It merely keeps the records and receives the periodic payments of principal and interest collected for it by the employer.

Accordingly, it is held that the income received by the trust from the notes in this case is not unrelated business taxable income within the meaning of section 512 of the Code.

Section 513.—Unrelated Trade or Business

26 CFR 1.513–1: Definition of unrelated trade or business.
(Also Section 501; 1.501(c)(3)–1.)

The leasing of its adjacent office building, and the furnishing of certain office services, by an exempt hospital to a hospital-based medical group is not unrelated trade or business under section 513 of the Code.

Rev. Rul. 69–463

A community hospital exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954 has asked whether the leasing arrangements described below constitute unrelated trade or business under section 513 of the Code.

The hospital has a medical staff of over 150 physicians and surgeons who have the privilege of admitting and treating patients in the hospital. However, in order to improve the hospital's ability to deliver a full range of health services to the community, the board of trustees decided to enter into negotiations with a medical group to induce them to carry on their professional activities on the hospital premises.

The medical group consists of 25 physicians and surgeons who, as their principal professional activity and as a group responsibility, are engaged in the coordinated practice of medicine in a common facility. The group is composed of a variety of medical specialists, including radiologists, pathologists, anesthesiologists, and internists.

As a result of arm's length negotiations, the hospital leased its adjacent office building to the group. The group uses the facility to provide medical services for its private patients. In addition, under the terms of the contract the various specialists within the group are also responsible for providing all diagnostic and therapeutic procedures, such as anesthesiology and radiology, to all hospital patients. The contract also requires that the group operate the hospital's emergency room on a 24-hour basis.

Because of its physical proximity to the hospital, the group is able to serve the outpatient needs of persons seeking medical services from the hospital on an ambulatory basis. In this way, the medical group also functions as the outpatient department of the hospital. The hospital maintains all medical records of the group as part of its central record keeping system.

Under the terms of the contract, the hospital provides the group with the nursing, secretarial, billing, collection, and record keeping services needed to carry on its medical practice. In consideration for the office space and services provided, the group is required to pay the hospital a fixed percentage of its gross billings for services rendered to both hospital and private patients.

The hospital has established that the presence of the group practice at the hospital has had the effect of (1) reducing hospital admissions, days of stay, and surgical rates; (2) permitting more efficient use of existing facilities; (3) making more effective use of scarce health manpower; (4) fulfilling the hospital's role as the health center of the community; (5) fixing administrative responsibility in a single group; and (6) making more effective use of hospital facilities for training purposes.

Section 513 of the Code defines the term "unrelated trade or business" as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of the purpose or function constituting the basis for its exemption under section 501.

Section 1.513–1(d)(2) of the Income Tax Regulations provides that a trade or business is "substantially related" to exempt purposes when the business activity has a substantial causal relationship to the achievement of the exempt purposes.

Section 1.514(b)–1(c)(1) of the regulations indicates, by example, that where a tax-exempt hospital leases real property owned by it to an association of doctors for use as a clinic, the rents derived under such lease would not be included in computing unrelated business taxable income if the clinic is substantially related to the carrying on of hospital functions.

A lease by a hospital of part of the hospital to a doctors' association to use as a clinic is generally considered a trade or business related to the carrying on of hospital functions. See S. Rep. No. 2375, 81st Cong., 2nd Sess., C.B. 1950–2, 483 at 507. One definition of the term "clinic" is "a group practice in which several physicians work cooperatively." (Webster's Seventh New Collegiate Dictionary, 1967.) It is held that the group practice described above contributes importantly to the hospital's operations and is therefore substantially related to the carrying on of hospital functions. Accordingly, the leasing activity described above is not unrelated trade or business under section 513 of the Code.

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26 CFR 1.513–1: Definition of unrelated trade or business.

The publication and continuing sale of a book having no substantial causal relationship to the achievement of an exempt purpose. See Rev. Rul. 69–430, page 129.

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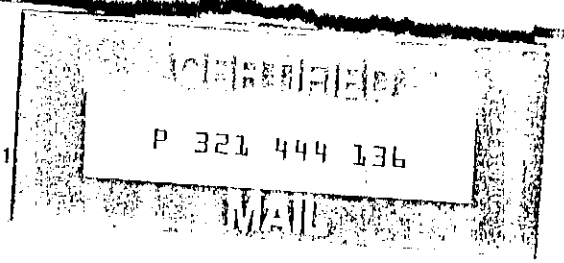

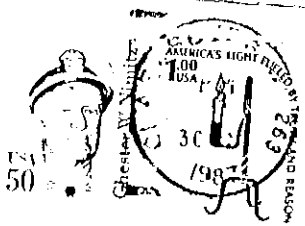

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AREA CODE 304
422-6559
422-4564

January 27, 1987

The Honorable Michael E. Caryl
State Tax Commissioner
State Tax Department
State Capitol
Charleston, WV 25301

Re: Comments on Proposed Regulations for Exemption of Property from Ad Valorem Property Taxation

Dear Commissioner Caryl:

Please take into consideration the following suggestions and comments when drafting final regulations on the above captioned subject.

1. W. Va. Leg. Reg. 11-3, Series III, §4.40, page 12 (1986).

   A "non-profit" or "not-for-profit" institution should be permitted to have excess revenues over expenses so long as such excess is applied to the furtherance of a charitable purpose and there is no significant private inurement. Prohibition of such excess would prevent a charity from expanding its ability to serve its purpose or from establishing reserves to continue its purpose in times where expenses exceeded revenues.

I suggest the following changes:

"...total aggregate operations other than that which is used or held for current or future use in furtherance of the charitable purposes of a charity...deriving profits from total aggregate annual operations or from individual beneficiaries...no significant benefit or inurement to private individuals or entities apart from those which are necessarily incorporated in the charitable activity."

2. W. Va. Leg. Reg. 11-3, Series III, §23.4, page 40 (1986) - Office Space for Staff Physicians.

Some space must be provided for the exclusive use of physicians in connection with their duties in the hospital. Physician space requirements would include space for hospital based physicians, such as radiologists, pathologists, anesthesiologists, et al, medical record keeping and charting, medical staff and committee meetings, rooms, locker rooms and lounges, sleeping quarters, etc. Therefore, I suggest inclusion of the following additional paragraph:

"23.4.3 Notwithstanding any other provision of these regulations, nothing contained herein shall be construed as prohibiting hospitals from providing space for the exclusive or non-exclusive use of physicians in connection with their duties within or for the benefit of the hospital, including, but not limited to, medical staff or committee meetings, medical record keeping and charting, duties of hospital based physicians, such as radiologists, pathologists, anesthesiologists, et al, changing clothes, eating and sleeping, or other similar requirements."

3. W. Va. Leg. Reg. 11-3, Series III, §23.8, page 42 (1986) - Admissions and Ability to Pay.

The offering of health care services by a charitable hospital on a below cost or free basis to those who are financially unable to pay for those services is limited by the economic health of the institution. It is essential that such hospitals continue to provide quality health care to their communities. It is entirely unrealistic to expect the federal or state governments to fill the void that would exist in their absence. In order to so continue these hospitals must be able to maintain and promote their own financial and economic health. The quantity of free and below cost health care which a hospital can provide is, therefore, necessarily limited to the amount which can reasonably be provided

consistent with the maintenance of the hospital's economic well-being. I, therefore, propose the following language changes in the proposed regulations:

"23.8.4 A hospital...provide necessary care to as many of those who are not able to pay for the services rendered as is reasonably possible consistent with the maintenance of the economic well-being and fiscal soundness of the hospital, and not exclusively...Free and below cost service must be provided to the extent described above to those who are unable to pay."

"23.8.5 A hospital...services to as many who request medical care but are unable to pay for it as it can consistent with the standard set forth in section 23.8.4, supra."

"23.8.6 Nothing contained in this regulation 23.8 shall be construed as requiring the providing of health care services by a hospital when in the professional judgment of the professional health care employees and medical staff of the hospital such services are not required."

4. W. Va. Leg. Reg. 11-3, Series III, §23.10, page 44 (1986) - Open Medical Staff.

The board of directors of a hospital is ultimately accountable for the quality of care of its patients within the hospital. They should, therefore, have the ability to restrict membership of the hospital medical staff consistent with the level of the quality of care they desire to maintain. Licensure by the State of West Virginia indicates only that a physician possesses the "minimum" professional skills and ethical standards to practice medicine in this state. A board of directors desiring to maintain a higher standard can reasonably restrict medical staff membership by establishing a reasonable credentialling process and providing for due process for those denied credentials or who have their credentials revoked.

Based upon this reasoning, I suggest the following changes:

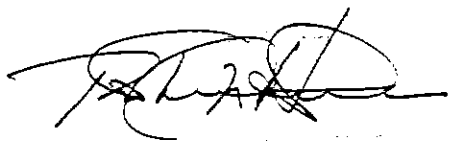
23.10.1 "A Hospital must not unreasonably restrict..."

23.10.3 "A restriction on the access of any physician licensed to practice medicine in West Virginia to the use of hospital facilities which is based upon the level of ethical and professional qualifications of such physicians shall not be deemed unreasonable for this purpose provided that adequate credentialling and due process provisions are incorporated in the by-laws of the hospital medical staff."

Thank you for your consideration of this matter.

Very truly yours,

BURK AND BAYLEY



Richard A. Hudson

RAH:fg

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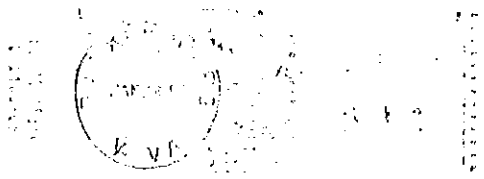

The Honorable Michael E. Caryl
State Tax Commissioner

State Tax Department
State Capitol
Charleston, WV 25301

PRESTON MEMORIAL HOSPITAL

January 20, 1987

Mr. Michael E. Caryl
Tax Commissioner
State Tax Department
State Capitol
Charleston, WV 25301

Dear Commissioner Caryl:

I have read with great interest the proposed rules on the exemption of property from Ad Valorem Property Taxation. There are certain provisions which cause me considerable concern. These provisions, as will be outlined below, seriously call to question the ability of Preston Memorial Hospital to continue to exist as a charitable hospital and; therefore, exempt from Ad Valorem Property Tax. I am sure you must be aware that many small rural hospitals in West Virginia are in serious financial peril. If we now lose our exemption from property taxation, causing a significant increase in our costs, without the ability to increase our rates to cover those costs, we will most certainly fail. I am sure you are also aware that the current competitive nature of health care delivery combined with the oppressive nature of government regulation in West Virginia and West Virginia's inability to provide adequate funding of the Medicaid program have further jeopardized small rural hospitals.

The specific provisions of concern are:

A. Section 4. Definitions. Item 4.40 - Preston Memorial Hospital could not currently meet this definition due to our need to produce revenues in excess of current expenses for the necessary replacement of capital equipment and facility. I feel the definition is much too narrow and needs to be expanded to include funds necessary for capital equipment and plant replacement. Parenthetically, this need is even recognized by the West Virginia Health Care Cost Review Commission when setting rates.

B. Section 23.8.5 - The language is much too restrictive and does not take into account acceptable and assessable programs designed specifically to assist the medically indegent, such as public health clinics and other government programs. The language simply does not

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take into account the fact that hospitals provide many other services in addition to in-patient hospitalization. For example, why should any not-for-profit hospital provide medical clinic services in a high cost emergency room if public health clinics are available in close proximety. It is not cost effective for the system, for the State, for the tax payer, and in fact contributes to the inefficiences of our system.

C. Section 23.9.4 - Once again the language appears so restrictive as to eliminate the practice of merit pay for employees. Also, the language precludes any form of incentive pay designed to improve efficiencies and lower costs.

D. Section 23.10.1 - One more time the language appears so restrictive as to preclude the appropriate and proper screening of medical professionals applying for Medical Staff privileges. There are any number of valid reasons why a particular physician licensed by West Virginia may not receive access to a hospital. For example, personal conduct, grossly inefficient practice, application for privileges not qualified to perform, to name just a few.

I appreciate the opportunity to comment on these proposed regulations and hope the points raised will be considered.

Sincerely,

Leonard W. Daugherty

Leonard W. Daugherty
Administrator

LWD:jt

INTERDEPARTMENTAL MAIL

John Montgomery
Legal - Technical

DO NOT METER

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Mr. Michael E. Caryl
Tax Commissioner
State Tax Department
State Capitol
Charleston, WV 25301

ST.
JOSEPH'S
HOSPITAL

January 28, 1987

Michael E. Caryl
State Tax Commissioner
State Tax Department
State Capitol
Charleston, West Virginia 25301

Re: Exemption of Property From Ad Valorem Property Taxation

Dear Mr. Caryl:

A review of the proposed rule for property taxation has reaised some concerns and inconsistencies which I hope you will take into consideration in drafting the final regulations.

Page 12, paragraph 4.40, states "The term "non-profit" and the term "not-for-profit" mean used with the view to producing no profit on total aggregate operations." In the same paragraph it also states that "total aggregate annual operations produce no significant private gain." These are two entirely different meanings. The first is totally unrealistic and would make it impossible for any business to stay in existence. The second is consistent with the IRS Private Inurement and with paragraph 18.5 on page 34 of the proposed rules.

On page 40, paragraph 23.4.1 and 23.4.2, the use of office space by physicians is addressed. This would seem to exclude the use by hospital based physicians such as pathologists and radiologists. The housing of these physicians is not just for the private gain of the individual but is essential to the proper medical treatment of the patients.

On page 43, paragraph 23.8.5 the provision of free and below cost service to all who request medical care and are unable to pay for it provides for no limitations. This type of "open door" arrangement could significantly impair the economic viability of a hospital. There needs to be something that would limit this to a reasonable level consistent with the financial capabilities of the institution.

19th Street and Murdoch Ave. Parkersburg, WV 26101 1-304-424-4111

On page 44, paragraph 23.10.1, the provisions for "the access of any physician licensed to practice medicine in West Virginia to the use of hospital facilities" presents the Board and Medial Staff from exercising their duty to assure the quality of medical care. Further, paragraph 23.10.2 addresses the limiting of the number of medical staff members based upon the service needs of the hospital. This does not address qualifications but it does partially restrict access by qualified physicians which could be a problem in the restraint of trade.

Your consideration of these items in drafting the final regulations would be greatly appreciated.

Sincerely,

James L. Backus
Senior Vice President and
Chief Financial Officer

c: Gil DeLaura, M.H.A., J.D.

ST.
JOSEPH'S
HOSPITAL

19th Street and Murdoch Avenue
Parkersburg, West Virginia 26101

PARKERSBURG W.VA. JAN 28 '87

US POSTAGE 0.18

Michael E. Caryl
State Tax Commissioner
State Tax Department
State Capitol
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St. Francis Hospital
Conducted by the Sisters of St. Joseph
333 Laidley Street
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Charleston, West Virginia 25322
Telephone (304) 348-8500

January 27, 1987

Mr. Michael E. Caryl
State Tax Commissioner
State Tax Department of West Virginia
Charleston, WV 25305

RE: Commission rule concerning exemption of property from ad valorem property taxes

Dear Commissioner Caryl:

As legal counsel to St. Francis Hospital, I have reviewed the proposed new regulations dealing with the exemption of property from ad valorem property taxes which were filed December 5, 1986.

Upon reviewing the proposed rule, I question whether a change in the present regulation is necessary and whether there has been abuse of the property tax exemption privilege in this state. I further question the need for extensive rules and regulations proposed therein.

The definition of "not-for-profit" states that no "significant" private gain can be made, a very vague term probably incapable of being supported in the courts and certainly one that is incapable of definition by a non-profit organization.

Your restrictions and requirements as to hospitals raise very much concern. The regulations place undue restrictions on hospitals concerning charity care in paragraphs 23.8.4 and 23.8.5. The hospitals in the Charleston-Kanawha County area and throughout the state, to the best of my knowledge, are extraordinary in their treatment of charity care. Though not specifically mandated by the law, non-profit hospitals have traditionally given charity care in enormous amounts. To my knowledge, there has never been an instance where a person has been refused medical care from a non-profit hospital for the lack of funds or inability to pay. Profit hospitals have traditionally turned away charity cases. In this state, there are very few profit hospitals; however, the requirements to allow each and every person charity care who requests it opens doors for abuse of the privilege and takes financial responsibility for the hospitals out of the hands of management. Such rules make an organization question whether it can best serve the public and itself by being for-profit.

At a time when federal rules and regulations have significantly slowed the pace of money flowing to hospitals and at a time when state regulations and regulatory bodies limit hospitals' expenditure of funds by and expansion of services rendered by hospitals, as well as requiring hospital charges to be approved by a rate setting authority, the additional requirement of unlimited charity care is unreasonable. Charity hospital care should be a concern of the public in general and not just a small section of industry known as hospitals. Without sufficient ability to limit charity care, whether used or not, management cannot protect the financial viability of an institution. Wide spread knowledge of such a charity rule could lead to abuse by patients requiring "non-profits" to consider "profit" status in order to better control its destiny.

Paragraph 23.1.0 deals with medical staffs of hospitals. At a time when hospitals and their medical staffs have come under strict rules and regulations due to federal reimbursement programs, the policies required under this paragraph undermind the effort of hospitals in this area. The attitude across the nation is to make medical staffs of hospitals more restrictive, not less restrictive. This is an effort to improve the quality of care and to eliminate excess use and abuse of hospital facilities and federal moneys. Strict staff peer review is necessary to eliminate unnecessary hospital admissions and quality of care problems, and hospitals need the ability to scrutinize potential staff members prior to granting privileges in order to insure such quality. In some instances, some hospitals may feel that the only method of obtaining this quality is through closed staffing. It has taken a strong effort to encourage the medical profession to police its own. Hospitals have encouraged such self-policing throughout, and to limit such policing mechanisms is contrary to good medicine and trends across the nation.

Throughout the entire proposed rules and regulations, the State Tax Department has attempted to take management out of the hands of managers by placing rules and regulations for which there has been no need demonstrated. The rule is attempting to control the type of corporate structure used by hospitals by forbidding payment of surplus funds to individuals or organizations, at a time when hospitals are having great financial difficulties. At most, the proposed rule is a gross overkill for situations that may in some small way exist throughout the state, and I oppose its implementation under the present circumstances and question the need for its implementation at all.

Very truly yours,

Louie A. Paterno, Jr.,
Senior Vice President and
Legal Counsel

LAPjr/dsc

St. Francis Hospital
333 Laidley Street
P. O. Box 471
Charleston, West Virginia 25322

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Mr. Michael E. Caryl
State Tax Commissioner
State Tax Department of West Virginia
Charleston, WV 25305

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January 28, 1987

State Tax Department
State Capitol
Charleston, West Virginia 25301
Attn: Mr. Michael E. Caryl
State Tax Commissioner

RE: Comments of Appalachian Regional Healthcare, Inc. to Proposed Rules Titled: "Exemption of Property from Ad Valorem Property Taxation"

Dear Mr. Caryl:

My client, Appalachian Regional Healthcare, Inc., (hereafter referred to as "ARH") which owns and operates hospitals in Beckley and Man, West Virginia, and which operates the Broaddus Hospital in Philippi, West Virginia, and as a non-profit corporation, wishes to make the following comments concerning the proposed new rules pertaining to "Exemption of Property from Ad Valorem Property Taxation."

> 4.40 The term "non-profit" and the term "not for profit" mean used with a view to producing no profit on total aggregate operations. Charities and others operating property not used for profit are not precluded from exacting charges upon beneficiaries for services rendered, nor are they precluded from deriving profits from individual beneficiaries on a case by case basis so long as total aggregate annual operations produce no significant private gain.

Comment: 1. It is not clear that the profit to be considered pertains only to West virginia operations. ARH, for example, owns and operates hospitals in two (2) other states. Those non-West Virginia operations should not be considered in the "aggregate operations."

2. The measure of what is a non-profit hospital far exceeds the federal requirement in not allowing "significant private gain."

3. "No significant private gain" is defined.

4. "Significant" is not defined.

5. The looseness of the definition exposes a non-profit hospital to potential arbitrary and capricious action because there is no clear standard as to what is "private gain" or "significant private gain."

6. Over a ten (10) year period assume there was a loss nine (9) of the ten (10) years but a "profit" one (1) of those years. As the rule speaks of "annual operations" does this mean because of the one (1) year profit the exemption is lost? Would it not be better to consider a number of past years in order to make a determination of profitability or "significant private gain?"

7. It appears that Section 18.5 (p. 34) may conflict with this Section 4.40. Section 18.5 does appear more reasonable in recognizing that "net earnings may not constitute a disqualifying private gain" where the surplus is used in furtherance of the charitable activities of the organization.

8. This section also appears in conflict with 23.1.3.

> 18.4 Payment of reasonable salaries or wages to administrative staff and employees of a charitable organization will not constitute disqualifying private gain if such salaries or wages closely approximate typical pay rates for comparable positions and are not for the purpose of siphoning off earnings of the organization.

Comment: The standard used in this section for wages are those which "closely approximate typical pay rates for comparable positions." Is this to be a community or national standard?

> 18.5 Realization of a surplus, or of positive net earnings may not constitute a disqualifying private gain. So long as any such surplus or earnings are used in furtherance of the charitable activities of the organization, no disqualifying gain can be said to inure to the benefit of any private individual.

Comment: While this appears at first blush to better state

what the standard for a "non-profit" institution is, it appears to conflict with Section 4.40. Here surplus is recognized as not being disqualifying. 4.40 establishes the standard of "no significant private gain." 18.5 also appears more in harmony with Section 23.1.3 but both conflict with Section 4.40.

23.1.1 Section 11-3-9 of the West Virginia Code provides:

> All property, real and personal, described in this section, and to the extent herein limited, shall be exempt from taxation, that is to say:...property belonging to any...hospital not held or leased out for profit... .

Comment: The portion of the Section appears to be in harmony with West Virginia Code §11-3-9 that hospitals are exempt if "not held or leased out for profit." However many of the subsections of Section 23 appear to be inconsistent with this exemption granted by the legislature. Those sections are as follows:

1. Section 23.4.1. It is sometimes necessary to attract physicians by providing office facilities. Hospitals can provide few if any services without a medical staff. It is often difficult to recruit physicians to rural areas to provide patient care in small rural communities. Sometimes an office near the hospital attracts physicians and allows the hospital to be utilized and therefore carry out its charitable, non-profit purposes. Charging rent to a physician should not be considered anymore of a disqualifying event than charging rent to the pharmacy. While patient services are always necessary, physician office space is frequently so. This should not disqualify a non-profit hospital for an exemption especially where rent is at the prevailing fair market value.

It also appears that Section 23.9.1.a allows such a leasing arrangement and while it specifically mentions leasing to a "private business for the purpose of furnishing necessary segments of the normal hospital operation; e.g. leasing space to a third party to operate a for profit drug store" it recognizes some activities are necessary for the operation of a hospital. If a drug store is permitted why not physicians to admit patients to use the hospital and consequently the drug store? This section also appeaars to be in direct conflict with Section 23.9.3 which allows <u>free</u> office space to physicians.

2. Section 23.4.2 should be considered in the same light as Section 23.4.1.

3. Section 23.7.8. Would it not be administratively more simple to grant the exemption to all hospitals so long as they remain and enjoy tax exempt status under the Internal Revenue Code?

4. Section 23.8.2 provides as follows:

> The most important single element in determining whether or not a hospital is charitable is its policy on the admission of patients who are unable to pay.

While a hospital policy may exist that does not, of course, mean it is being fulfilled. While providing care to patients who are unable to pay is a laudable goal to fulfill such a goal could lead to fiscal ruin. It is suggested that there be added "to the extent of the hospital's reasonable ability to do so. The Rule provides it is "the most important single element." What are the other elements to be considered?

5. Section 23.8.4 provides as follows:

> A hospital, to be charitable, must be operated in such a manner so as to provide necessary care to those who are not able to pay for the services rendered, not exclusively for those who are able and expected to pay. Free and below cost service must be provided to those who are unable to pay.

This section should be tempered by inserting after the last word "to the extent of the hospital's reasonable ability to do so."

6. Section 23.8.5 provides as follows:

> A hospital will not be considered charitable and, therefore, will not be granted tax exempt status if it does not provide free and below cost services to all who request medical care but are unable to pay for it.

This section should also have added to it "to the extent of the hospital's reasonable ability to do so."

23.9.1.a Provided such an agreement is entered into on an arms length basis, as that phrase is generally defined, a hospital may lease a portion of its space to private business for the purpose of furnishing necessary segments of the normal hospital operation; e.g., leasing space to a third party to operate a for-profit drug store. Leased areas shall not be more than ten percent (10%) of the available floor space on the floor of the hospital whereon the leased activity is located; available floor space shall be all floor space exclusive of maintenance areas or common areas such as hallways and stairways.

Comment: The 10% rule appears arbitrary. What if the whole laboratory or radiology department is leased out or for that matter the pharmacy or emergency room. As long as the hospital is fulfilling the other criteria why should it not be exempt. It may be fiscally prudent to lease more than 10% to a for profit business but retain the bed areas.

23.9.3 A hospital may provide free office space to members of its staff as an enticement to qualified medical personnel. The hospital may not provide free ofice space to some of its staff members and charge others, no may some staff members be deprived of office space when others receive free office space. Such offices may not be so used as to cause primary and immediate use of the hospital property to be other than charitable. For instance, physicians holding office space on an exempt hospital tract may examine and treat paying, for profit patients in such offices, but such use of the property may not be so extensive as to make the primary and immediate use of the tract as a whole a profit making operation rather than a charitable one in accordance with section 18 of these regulations.

Comment: This section, while more reasonable than Section 23.4.1, is in clear conflict with that section.

23.9.4 A hospital may not pay out any surplus operating funds to any individual or organization. This prohibition applies to payments in the form of dividends, salary bonuses, excessive salaries, gifts of tangible personal property, etc.

Comment: This section would prohibit allocation of funds to any other organization. This would apparently include other charitable organizations as well as to the state. Does this mean the state can no longer assess hospitals in order to meet its medicaid obligations?

> 23.10.1 A hospital must not restrict the access of any physician licensed to practice medicine in West Virginia to the use of hospital facilities.
>
> 23.10.2 A hospital may restrict its medical staff to a limited number of members, based upon the service needs of the hospital. However, any restrictions of the hospital's medical staff will be closely scrutinized in determining whether or not the hospital is exempt from ad valorem taxation.

Comment: These two sections would appear to abolish credentialing, peer review and medical staff disciplinary actions all of which is in violation of state law which requires it, Federal law which mandates it through conditions of participation for medicare and medicaid and The Joint Commission on Accrediation of Hospitals which certifies hospitals.

Hospitals, with the aid of their organized medical staffs must be free to admit only those physicians who are qualified and competent and who are capable to have the privileges for which they are trained and able to competently perform. A state license to practice medicine does not qualify a physician to do heart catherization, and obstetrician to do an open reduction or a pathologist to read an x-ray. To establish the above rules may cause a hospital to not only lose its license, lose its ability to recover from major third party payors, but expose the public to physicians who perform care beyond their capabilities. The established law and practice of medical staff involvement in quality of care is absolute necessary. These two regulations should be cast aside and forgotten.

> 23.12.1.a To defray the expense of providing free or below cost service to patients who cannot afford to pay for it. Any funds from unrestricted voluntary contributions must be used to provide free or below cost services before being used for any other purpose. However, restricted contributions shall be used for the specified purposes.

Comment: If necessary equipment purchases or other expenditures are, at the moment, more important than providing "free or below cost services" should the hospital not be free to do so. For example, suppose a hospital is the only one for several miles and has a maternity ward with no fetal monitor which is the current state of the art. This being the only facility in a rural area, pregnant women can go there for delivery but without the safeguard of a fetal monitor, or take the chance she might make it to another, and perhaps larger, facility where there is adequate equipment. Is the hospital to stand by and provide free care and let the potential bad consequences occur due to lack of equipment? It appears this section fails to recognize that other considerations need be given to health care delivery. Accordingly the facility should be required to "provide free or below cost services" only to the reasonable extent of the hospital's ability to do so. This language should be added.

> 23.12.2 If a hospital receives funds for capital improvement under the Hill-Burton Act (42 U.S.C. §§ 291 et. seq.) it is required, as a condition of receipt of the funds, to provide free or below cost services to those who are unable to afford such services. So long as the hospital continues to provide services to all who are unable to pay for services rendered, free or below cost services shall continue to be considered as charitable.

Comment: This section too, should have added to it "only to the reasonable extent of the hospital's ability to do so."

> 23.15.1 When a hospital purchases land which it intends to use for capital improvements, which will be used for charitable purposes, the land shall not be exempt so long as the land is vacant. So long as the land is vacant it can be sold and used for noncharitable purposes.
>
> 23.15.2 Vacant tracts owned by a hospital will remain subject to taxation, even if plans are made which show that the land will be used for tax exempt purposes.
>
> 23.15.3 If construction is begun on a tract for the purpose of making improvements to be used for hospital purposes, such property shall not be exempt

under this section until it has been put to such actual use as to make the primary and immediate use of the property charitable in accordance with § 18 of these regulations.

Comment: West Virginia Code §11-3-9 provides the ad valorem exemption for property of a hospital. This section states the legislative intent. The act does not say the property must be in use, it merely mainly says it applies to property of "any hospital." This section, like so many others, goes further than establishing guidelines to ensure uniform assessment practices and conflicts with the statute.

23.16.1 Property which a hospital owns and uses for housing for doctors, nurses, interns, technicians and other hospital personnel shall not be exempt from ad valorem property tax. Such property would be used for purposes which would put it in competition with commercial housing. Such use would not be primarily and immediately charitable.

Comment: See comment to Section 23.4.1 which is also applicable here.

23.17.2 Any property owned by a hospital which is used as a place of residence for medical or nursing students, or other students who are studying in a medical related field at the hospital shall not be exempt from ad valorem property tax unless such property is exempt under § 20 of these regulations.

Comment: See comment to Section 23.4.1 which is also applicable here.

GENERAL COMMENTS:

1. It appears the statute itself provides an exemption for hospitals for property not held or leased out for profit. Many of the above rules attempt to define profit and establish guidelines. They conflict with one another in several respects and appear to go beyond the statute. While the Tax Commissioner is empowered to issue regulations, the statute limits those to providing "each assessor with guidelines to ensure uniform assessment practices statewide to effect the intent of this section." Sections 23.15.1, 23.15.2 and 23.15.3 are examples of causing hospital property to be disqualified when nothing in the

legislation mandates it. Therefore the intent of the legislation is not properly set forth in the guidelines for these sections and others mentioned herein.

2. While the apparent intent of the Rules is to gain more revenue from non-profit institutions, including hospitals, the true impact will be further financial pressure on hospitals. One has to only read the newspapers to be aware of the crisis in health care costs. The Federal and State governments have become the largest third party payors (medicare and medicaid) and have increasingly resisted passing through costs borne by hospitals. This is another example of the state wishing to extract more and pay less.

The payment programs adopted by federal and state authorities, have been set with experience that does not include the payment of additional taxes. Somehow, it is expected and/or assumed, that the burden of additional expense can be absorbed by health care instutions. That is simply not true.

In a real sense, it is another example of the pressures placed on private paying patients and non-government third party payors. Shifting the cast to this group is not a fair distribution of the expense.

3. While the filing of these proposed regulations may have met the minimum standards required by law, notice to affected hospitals and to such organizations as the West Virginia Hospital Association would have allowed more time for reflective review. These proposed Rules were only received by ARH on or about January 20, 1987 and there has been only a limited opportunity for review. It is my understanding West Virginia hospitals were generally unaware of those proposed regulations and came to the attention of the WVHA only about the middle of January some 1½ months after the filing. An attempt has been made to supply comments on only those sections which are particulately egregious and which are in conflict with one another or the statute under which they were promulgated. The Rules show a lack of understanding of non-profit hospitals, the hospital industry in general and the manner medical staffs deal with quality of medicine provided in a hospital. It would seem non-profit hospitals should be partners in drafting fair rules. They could assist those responsible for the drafting to understand hospitals in general and non-profit hospitals in particular.

In the future would it be satisfactory to deal with the industry by notification of proposed rules which have such a significant impact beyond the minimum requirements of the law?

Very truly yours,

David T. Enlow

DTE:psw

cc: Mr. William B. Williamson
Vice President of Fiscal Affairs
Appalachian Regional Healthcare, Inc.

Mr. Roger Wolz
Administrator Beckley ARH

Mr. Jason Riggins
Administrator Man ARH

Mr. Norman Wright
Administrator Broaddus Hospital

Mr. Gil DeLaura
Vice President and General Counsel
West Virginia Hospital Association

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WHEELING HOSPITAL

January 28, 1987

Mr. Michael E. Caryl
Tax Commissioner
State Tax Department
State Capitol
Charleston, West Virginia 25301

Dear Mr. Caryl:

I am writing regarding the proposed rules on exemption of property from Ad Valorem property taxation particularly as the rules relate to charitable hospitals.

As I am sure you realize, the role of the traditional nonprofit community hospital has undergone significant change in the past few years. Although the primary role of the nonprofit community hospital will continue to be to render acute inpatient services to our citizens, hospitals are now expected to provide a multitude of other services in a coordinated approach to maximize care and minimize cost. Although I realize tax regulation is a complex issue, I would suggest a number of changes for your consideration to provide nonprofit charitable hospitals with flexibility in today's rapidly changing environment. I believe all of these changes would be considered as a reasonable part of the overall purpose of today's hospitals.

1. Section 4.40

The term "nonprofit" means used with a view to producing no profit on total aggregate operations. The definition should also state as does Section 18.5 that realization of a surplus or of positive net earnings may not constitute a disqualifying private gain so long as such surplus or earnings are used in furtherance of the charitable objects and purposes of the organization.

2. Section 23.4

Although office space is of some convenience for staff physicians, I believe office space is of primary benefit to patients and the hospital. Most hospitals today offer a "shopping center" concept to patients where all of their needs can be met on one campus. This concept provides much improved continuity of care and increased efficiency reducing cost. Patients can visit their physicians and then walk "next door" to

obtain needed diagnostic tests or treatments. In many cases, patients again see their physician after testing. In addition, physicians "on campus" are immediately available for inpatients needing urgent specialty consultants, obstetrical delivery, or trauma surgery.

I feel physician office space which is offered to physicians on a "cost" basis is consistent with the overall mission of the hospital and should be exempt from property taxation.

3. Section 23.8.5

Although nonprofit hospitals must provide charity care, no hospital can provide unlimited care to all who are unable to pay. If this regulation were adopted, the Medicaid program for the indigent could be abolished and hospitals would be required to render "free" care to maintain their nonprofit status. The regulation should be modified to require tax exempt hospitals to furnish reasonable amounts of free care to patients residing in its service area consistent with its financial ability, just as required by other nonprofit charitable agencies such as the Red Cross or Salvation Army.

4. Section 23.9.3

Hospitals should be allowed to provide free office space or space at a reduced rent to members of its staff to encourage physicians to establish practice in the community. However, hospitals should not be required to provide office space to all physicians. A community may have adequate surgeons and would not want to attract more. However, the community may need neurologists and a hospital may need to offer free space for a limited period of time to attract this specialty physician.

5. Section 23.9.4

In today's competitive environment with severe pressure to contain and reduce costs, short-term incentives or bonuses are frequently utilized to improve productivity. Compensation methods utilizing bonuses should be allowable provided such overall compensation is not significantly excessive when compared to other institutions for comparable positions and performance.

6. Section 23.9.5

Operating funds cannot be restricted only for hospital purposes. Today's hospital may operate a hospice, nursing

home, home health agency or similar service consistent with the overall primary charitable purpose of the hospital. Many of these services require financial support from hospital operating funds.

7. Section 23.10.1

This section should be modified so that hospitals do not unreasonably or without good cause restrict access to hospital facilities. Obviously, the extent of access and use of facilities must be based on privileges granted contingent upon the training and experience of the physician and the physician's willingness to abide by hospital policies, rules, and regulations.

8. Section 23.11.2

See Comment 6 regarding Section 23.9.5.

9. Section 23.12.1

Hospitals should have the flexibility to utilize unrestricted voluntary contributions in a manner which will best serve the overall mission of the hospital, rather than requiring unrestricted voluntary contributions to be used to provide free or below cost services before used for any other purpose. For example, with the proposed regulation as now written, a hospital in severe financial trouble could lose its tax exempt status if voluntary unrestricted contributions were used to pay debts to avoid bankruptcy rather than used to provide free care.

10. Section 23.15

Vacant land purchased with intent for use for charitable purposes should be tax exempt. At a minimum, such land should be tax exempt if construction is begun for the purpose of making improvements for hospital purposes even if not yet in actual use.

11. Section 23.17.2

A clearly stated purpose of many hospitals is to assist in the education of medical or nursing students in cooperation with educational institutions. Such training is essential in providing trained professionals and assists in recruitment of such professional upon completion of their training. Property owned by a hospital to house medical or nursing students is clearly related to their overall mission and should be tax exempt.

12. Section 23.17.3

Hospitals must not only treat the ill, but take an active role in preventing illness and promoting "wellness" to the population it serves. Certain types of recreational facilities staffed by trained professionals which offer a variety of "wellness" programs should be tax exempt when their ancillary use furthers the stated primary purpose of the hospital.

I hope my comments will be of assistance to you. I feel flexibility is essential in any regulations adopted given the rapidly changing environments and role of hospitals today.

Sincerely,

S. G. Nazzaro
Administrator

SGN/mr

c: Mr. Kenneth M. Rutledge

WHEELING
HOSPITAL

MEDICAL PARK · WHEELING, WEST VIRGINIA 26003

Mr. Michael E. Caryl
Tax Commissioner
State Tax Department
State Capitol
Charleston, WV 25301

OVMC Ohio Valley Medical Center, Inc.
Wheeling, West Virginia 26003
304 - 234-0123

January 29, 1987

Mr. Michael E. Caryl
State Tax Commissioner
State Tax Department
State Capitol
Charleston, W.Va. 25301

Dear Mr. Caryl:

Ohio Valley Medical Center, Inc. herein provides its comments to proposed regulations which bear directly on the ability of Ohio Valley Medical Center to retain property tax exemptions should these regulations be adopted in their current form. Specifically we are providing comments to the Proposed West Virginia Administrative Regulations, State Tax Department, Exemption of Property From Ad Valovem Property Taxes.

We have reviewed the text of the proposed regulations and have identified five critical issues:

1. Definition of a charitable hospital.
2. Requirement to provide free care.
3. Open medical staff criteria.
4. Use of unrestricted contributions to provide free care.
5. Use of hospital funds.

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1) Section 23.7 Hospitals.

23.7.6 Under W.Va. Const. art. X, Section 1. the exemption of property from taxation depends on its use. To warrant such exemption for a purpose there stated, the use must be primary and immediate, not secondary or remote. State ex rel.Farr v. Martin, 105 W.Va. 600, 143 S.E. 356 (1928).

23.7.7 The fact that a hospital is incorporated as a nonstock, nonprofit hospital does not make it charitable, even though some operating funds are derived from private, voluntary contributions. Adkins v. St. Francis Hospital of Charleston, W.Va., 149 W.Va. 705 (1965).

23.7.8 Any Internal Revenue Service determination as to exemption of a hospital from Federal taxation under Section 501(c)(3) of the Internal Revenue Cod [26 U.S.C. Section 501(c)(3)] shall not be determinative of the issue of whether property is exempt for ad valorem property tax purposes.

23.7.9 If the hospital ceases to be used for charitable purposes it will lose its tax exempt status.

COMMENT:

The principle established in Adkins v. St. Francis Hospital is, for purposes of immunity from prosecution, "that a nonstock, nonprofit hospital, though generally classified as a charitable institution, may be held liable to a patient for injury negligently inflicted by its servants, agents and employees". To extend charitable immunity for negligent or tortious conduct fosters neglect while liability tends to induce care and caution. To extend this principle to a regulation concerning exemption from ad valorum property taxes, we believe goes well beyond the intention of the courts in Adkins.

Further, to abandon the Internal Revenue Service determination of tax-exemption as a basis for determining exemption for ad valorum property tax, constitutes a material change in the application of law. Virtually every hospital in the State under these proposed regulations, will be subject to property tax. We contend that application of Section 23.7.8 by regulation and in the absence of specific enabling legislation constitutes taxation without representation which is unconstitutional. Adoption of these regulations will cause a considerable increase in the cost of healthcare services in the State of West Virginia.

2) Section 23.8 Admission and ability to pay.

23.8.1 In order for a hospital to be charitable it must serve a general public interest, not a private interest. Therefore, the services of the hospital must be made available to the general public.

23.8.2 The most important single element in determining whether or not a hospital is charitable is its policy on the admission of patients who are unable to pay.

23.8.3 The admission policy of a hospital, in order to be considered charitable, must reflect the following standards:

23.8.3.b A hospital may not insist that patients provide assurance that all of their bills will be paid as a condition of admission. Adkins v St. Francis Hospital, supra.

23.8.3.c A hospital may develop reasonable rules and regulations which require that those patients who are financially able so to do to pay the charges incurred for the care provided.

23.8.4 A hospital, to be charitable, must be operated in such a manner so as to provide necessary care to those who are not able to pay for the services rendered, not exclusively for those who are able and expected to pay. Free and below cost service must be provided to those who are unable to pay.

23.8.5 A hospital will not be considered charitable and, therefore, will not be granted tax exempt status if it does not provide free and below cost services to all who request medical care but are unable to pay for it.

COMMENT:

Ohio Valley Medical Center and indeed the community-at-large and the entire hospital industry are agonizing over the issue of uncompensated care. OVMC has a long-standing and laudable humanitarian mission of maintaining an open door policy when it comes to providing necessary medical care to patients who are unable to pay. OVMC has paid dearly for maintenance of this policy and some would question if OVMC can continue to bear this burden without some measure of restraint. OVMC's annual uncompensated care burden has more than doubled in the last five years from $2.9 million in 1981 to $6.2 million in 1986.

Criteria for determining necessary medical care is reasonably defined and documented. Criteria for determining financial ability to pay is not clearly defined and is subject to considerable dispute. These regulations seem to imply that the Hospital's criteria for determining financial ability to pay be clearly defined, documented and incorporated into hospital policy. The regulation offers no definition or criteria for such determination.

* What about the hospital's financial ability to support charity care?

* Are we simply to provide free care to all persons who present themselves for admission or service until we expend all of our assets and resources and are forced into bankruptcy?

* How does the requirement to provide charity care balance with the hospital's social responsibility to remain in business to serve the healthcare needs of its community?

* Who should bear the burden of uncompensated care? The hospitals? Insurance companies? Employers? Federal, state or local government? The bond holders of a hospital's debt due to default?

* Who is to determine whether a hospital's policy, rules and regulations are "reasonable"?

* On what basis will this reasonability be determined?

* Does a hospital policy that leads to a determination that a certain person has the ability to pay, together with a requirement for such person to make a preadmission deposit constitute an unreasonable condition of admission?

* Does a policy requiring execution of a patient financial responsibility agreement upon admission for persons deemed under such policy to have the financial ability to pay constitute an unreasonable condition of admission?

* What is to prevent a retrospective and/or retroactive determination of an unreasonable policy based on the complaint of one individual? Five individuals? Who is going to investigate such complaints? How can such complaints be defended or decisions appealed in the absence of regulatory criteria?

We believe that reference to Adkins v. St. Francis Hospital in this regard is inappropriate. As previously discussed, Adkins addressed immunity from prosecution for negligent and tortious acts. In fact Adkins states the following:

> "The defendant (hospital) renders a valuable service and it expects to be paid for such service. This is as it should be. The defendant makes a worthy contribution toward the alleviation and cure of ills of mankind but, while in no way detracting from the estimable value of such contribution, it functions as a business and as such it must bear all the responsibilities of a business. It is entitled to be paid for services rendered, but it must also be prepared to meet all obligations incurred in the operation of its business."

3) Section 23.10 Open medical staff.

23.10.1 A hospital must not restrict the access of any physician licensed to practice medicine in West Virginia to the use of hospital facilities.

23.10.2 A hospital may restrict its medical staff to a limited number of members, based upon the service needs of the hospital. However, any restrictions of the hospital's medical staff will be closely scrutinized in determining whether or not the hospital is exempt from ad valorem taxation.

COMMENT:

I find it interesting that the State spent considerable discussion on reasonable rules about patient ability to pay without ever defining "ability to pay". Yet, when it comes to open medical staff requirements, it appears that all a person needs is a license to practice in the State and that person can do anything he/she wants in any hospital in the State. Where is the discussion of reasonable Hospital/Medical Staff bylaws, rules and regulations and where does the Hospital/Medical staff retain the right to grant privileges or revoke privileges?

* Does 23.10.1 render all Hospital and Medical Staff By-laws regarding physician credentials and staff privileges null and void?

* Does this mean that the hospital can not set higher standards for physician credentials and staff privileges than the minimum standards of State licensing requirements?

* Does the Hospital's/Medical Staff's disciplinary actions, in due course and due diligence with justifiable basis in accordance with bylaws, rules and regulations, to suspend the privileges of a physician become meaningless so long as such physician retains his/her license to practice in the State?

* Can any physician who has a license to practice in the State demand and obtain access to the use of any hospital facilities with or without Hospital/Medical Staff credentials and privileges?

* How is the determination of the "service needs of the hospital" to be defined and made? Who will make such determination and how will the scrutinizing be done?

4) Section 23.12 Voluntary contributions and other revenue.

23.12.1 Any hospital may receive voluntary contributions. Any voluntary contributions received by a hospital may be used for the following purposes:

23.12.1.a To defray the expense of providing free or below cost service to patients who cannot afford to pay for it. Any funds from unrestricted voluntary contributions must be used to provide free or below cost services before being used for any other purpose. However, restricted contributions shall be used for the specified purposes.

23.12.1.b To purchase equipment to be used in the provision of medical treatment.

23.12.1.c To purchase real estate for capital expansion.

23.12.1.d To cover the cost of construction of capital improvements, so long as they are to be used directly in the provision of medical services.

COMMENT:

I do not understand 23.12.1.a. Either a contribution is not restricted by the donor or it is restricted by the donor for a specific purpose. There is no third option by definition.

Further consider the definition of the word "used" as found in Section 4.47.1 of these proposed regulations:

> 4.47.1 Whenever property is required to be "used" for stated purposes in order to qualify for exemption under W.Va. Code Section 11-3-9, the stated purposes must be the primary or immediate use of the property, and not a secondary or remote use. The property may be used for purposes which are ancillary to the stated purpose, but the ancillary use must further the stated, primary use.

Refer to the second sentence of 23.12.1.a above and consider this hypothetical scenario:

A Foundation donates an unrestricted voluntary contribution of $20 million to OVMC. OVMC wants to acquire clinical equipment which costs $20 million. When can OVMC acquire the clinical equipment?

a. OVMC provides today $16,986 of uncompensated care ($6.2 million per year actual ÷ 365 days). OVMC tomorrow can spend $19,983,014 for the clinical equipment.

b. OVMC provides this month $516,667 of uncompensated care and can buy the equipment next month with the remaining $19,483,333.

c. OVMC provides this year $6.2 million of uncompensated care and can buy the equipment next year with the remaining $13.8 million.

d. OVMC can not buy the equipment for 3.2 years, but then it will not matter because the equipment will be technologically obsolete and OVMC has spent all the money in the provision of free care.

I do not see how OVMC would ever get out of the 23.12.1.a loop such that it could ever get to the options provided by 23.12.1.b, c and d. Are not the restrictions under Item 1 - Section 23.8 restrictive enough without imposing Section 23.12.1.a?

Assuming OVMC could breakout of the 23.12.1.a loop, does the purchase of a chair or typewriter constitute "equipment to be used in the provision of medical treatment"? How does the "provision of medical treatment" differ from "the provision of medical services"?

What is the definition of "real estate" in 23.12.1.c? Can a hospital purchase land on which a gas station exists and continue to retain its tax exempt status under this provision since it did not have to expend its voluntary unrestricted contribution for construction of the gas station?

Why not simply state the following? A hospital may receive voluntary contributions. Restricted contributions shall be used for the specified purposes. Unrestricted contributions shall be used to further the hospitals' exempt purpose so long as such use shall not inure to the benefit of any individual or for-profit organization.

5) Section 23.9 Regarding use of funds.

23.9.4 A hospital may not pay out any surplus operating funds to any individual or organization. This prohibition applies to payments in the form of dividends, salary bonuses, excessive salaries, gifts of tangible personal property, etc.

23.9.5 Any excess operating funds shall be used only for hospital purposes. Such purposes may include the payment of reasonable salaries, the purchase of new or replacement equipment, and the cost of capital improvements.

COMMENT:

* Does 23.9.4 preclude employee incentive compensation plans?
* Salaries are generally considered to be operating expenses and deducted from operating revenue to arrive at surplus operating funds?
* Does 23.9.4 preclude dividends paid by an exempt hospital to its 501 (c)(3) parent organization?
* Does 23.9.3 and 23.9.4 preclude charitable gifts from the exempt hospital to another unrelated 501(c)(3) organization?
* What about retirement of debt? Is this an acceptable use of excess operating funds?

SUMMARY

These proposed regulations are poorly written, not carefully thought through and use inconsistent and/or undefined wording which may or may not mean the same to each reader. In our opinion, these proposed regulations require substantial editing and rewrite before they should be approved and implemented.

Sincerely,

Steven L. Finch
Acting Chief Financial Officer

SLF/ram

OVMC

The Ohio Valley Medical Center

Wheeling, West Virginia 26003

Mr. Michael E. Caryl
State Tax Commissioner
State Tax Department
State Capitol
Charleston, W.Va. 25301

WEST VIRGINIA HOSPITAL ASSOCIATION

April 26, 1988

John Montgomery, Esquire
Legal Division
State Tax Department
State Capitol
Charleston, West Virginia 25301

Dear Mr. Montgomery:

Thank you for allowing me the opportunity to review and comment upon proposed draft legislative regulations relating to ad valorem taxation (110 C.S.R. 3, §_____(1986), which I received April 18, 1988.

It is my understanding that the Commissioner intends, after his review and possible modification to issue these regulations as a proposed legislative rule and to further allow a public written comment period in May 1988.

The comments contained herein should be considered preliminary in nature, as the Hospital Association wishes to avail itself of the review period to be held May 1988. Additionally, previous comments filed with the Commissioner on January 30, 1987, are incorported by reference in this letter.

I hope the following remarks will prove constructive and useful.

Hospitals

The definition contained at 27.7.3 states that the term hospital does not include "first aid stations and emergency care facilities or other facilities which do not provide reception and care of persons for a continuous period longer than 24 hours for the purpose of providing room board nursing service and hospital facilities. . ."

3422 Pennsylvania Avenue Charleston, WV 25302 (304) 345-9842 FAX # (304) 342-2621

This definition will have the effect of taking many hospital facilities in West Virginia and revoking their property tax exemption. Hospitals have encountered significant pressure particularly from federal and state governments and professional review organizations (e.g.; the West Virginia Medical Institute) to render patient care on an outpatient rather than inpatient basis. Outpatient care may occur within the hospital proper or in a separate building. The nature of medical services is frequently mandated on an outpatient basis for Medicare and Medicaid patients. Every nonprofit hospital in West Virginia is required to have an agreement with the PRO.

The Social Security Act (Act) as amended by the Tax Equity and Fiscal Responsibility Reform Act of 1982 (TEFRA, Public Law 97-248) requires that a PRO, in accordance with its contract with the Health Care Financing Administration (HCFA), review services and items provided by physicians, other health care practitioners, and providers of health care services for which Medicare payment is sought. The PRO will determine whether:

- *the services and items are or were reasonable and medically necessary;*
- *the quality of the services meets professionally recognized standards of health care; and*
- *those services and items proposed to be provided on an inpatient basis in a hospital or other health care facility could, consistent with the provision of appropriate medical care, be effectively provided more economically on an outpatient basis or in an inpatient health care facility of a different type.*

Section 1154 of TEFRA requires that a PRO must make available its facilities and resources for contracting with private and public entities, paying for health care in its area, for review of the services reimbursed by such entities.

The regulation at 24.7.3 will eliminate exemptions for any free standing facility including but not limited to drug and alcohol abuse clinics, free standing rehabilitation facilities, outpatient surgical centers, same day surgery, follow-up mental health centers.

Admissions and Ability To Pay

Sections 24.8.5 in combination with §24.12.2 create significant problems. The concept of rendering free care as one of several charitable activities is not at issue. The requirement that hospitals have a charity care plan is reasonable. Posting public notice is not objectionable. What is wrong with these regulations, although they have been modified is that taken as a whole they appear to create a right of free care to any individual who does not have the ability to pay for any medical service he or she desires.

Suggested Changes.

24.8.1 Change last sentence

The services of the hospital must be made available to the general public provided that

Hospital required to develop a charity care plan which must be approved by its board of trustees.

Hospital should not be forced to provide care for people when hospital does not have capability to render care. Hospital must have admissions which are medically appropriate. PRO pressure.

24.8.4 Add to end

consistent with its charity care plan.

24.8.5 remove language in third line: to all who

request medical care but are unable to pay for it.

Suggested change:

A hospital will not be considered charitable and, therefore, will not be granted tax exempt status if it does not provide a reasonable volume of free and below cost services to individuals financially unable to pay for those services. Provided, that at the time free or below cost medical care is sought:

A) the hospital, ~~customarily~~ usually provides such medical services;

B) capability presently exists to render the service;

C) the care requested is medically appropriate;

D) the hospital in providing such care will not be sanctioned by a Professional Standards Review Organization;

E) rendering of such medical services is consistent with the charity care plan of the hospital.

The Hill Burton Requirement

Section 24.12.2 as contained in the regulations is a misstatement of law. The open door requirement (providing services to all who are unable to pay) simply does not exist, being eliminated in 1979. Nor are Hill Burton hospitals required to provide a reasonable amount of free care indefinitely. In fact, the majority of hospitals have met the Hill Burton pay back requirements. In 1987, the U.S. Public Health Service issued radically different final rules which are designed to ease remaining pay back requirements.

The Hill Burton requirement at 24.12.2 in conjunction with 24.8.4 and 24.8.5 would seem to create an unrestricted right of access.

Private Gain or Benefit

The proposed regulations indicate that "no benefit shall inure to any employee, staff member . . or other person associated with the hospital (§24.9.1) and a hospital "may not pay out any surplus operating funds to any individual or organization." Included are dividends and salary bonuses (§24.9.3.1). It would appear that reasonable employee incentive pay systems are prohibited.

The leasing provision of 10% at section 24.9.1.1 in its present form could result in either loss of property tax exemption or inability of hospitals to offer medical service.

The statewide community service standard contained at §24.9.2 will cause hospitals particularly in border areas to fail in recruiting efforts, particularly for registered nurses and other skilled medical personnel as these hospitals must compete with other non West Virginia urban areas.

Voluntary Contributions and Other Revenue

"Any funds from unrestricted voluntary contributions must be used to provide free or below cost services before being used for any other purpose." This section in 24.12.1.1 puts mistaken reliance upon the proper use of unrestricted voluntary contributions. It is reasonable to tell hospitals that in order to retain a tax exemption, free care must be rendered. But it is unreasonable to them state how the hospital must manage internal finances supervised by a Board of Trustees. This portion

LAW OFFICES

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July 26, 1988

Hon. Ken Hechler
Secretary of State
State Capitol Complex
Charleston, WV 25305

Re: State Tax Department; Title 110; Series 3, Exemption Of Property From Ad Valorem Property Taxation

Dear Secretary Hechler:

This firm represents the West Virginia Hospital Association ("Association") in connection with the referenced matter.

On July 1, 1988, the State Tax Department filed with your office the referenced Emergency Rule entitled, "Exemption Of Property From Ad Valorem Property Taxation." The Association respectfully objects to the filing of the proposed rule as an "emergency" and requests that you disapprove the same as an emergency filing under your statutory authority.

The filing of the proposed rule as an emergency is an obvious attempt by the State Tax Department to bypass the legislative rule-making review committee with respect to the controversial issue of taxation. However, the ability of an administrative agency such as the State Tax Department to take such action is limited by statute to instances where an actual emergency exists. In that connection, W.Va. Code, § 29A-3-15(g) provides as follows:

> For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or

by a federal statute or regulation or to prevent substantial harm to the public interest.

The circumstances relied upon to justify the filing of the proposed rule as an "emergency" as set forth therein are represented to be as follows:

> STATE EX REL. COOK V. ROSE, 299 S.E.2d 3 (W.VA. 1982) REQUIRES THE STATE TAX COMMISSIONER TO ISSUE CLEAR AND SPECIFIC REGULATIONS AND GUIDELINES TO ASSIST ASSESSORS IN DETERMINING QUESTIONS OF EXEMPTION FROM AD VALOREM PROPERTY TAXATION. BECAUSE THERE ARE NO UNIFORM GUIDELINES CURRENTLY IN EXISTENCE AND DUE TO THE FACT THAT MORE COMPLEX ISSUES AND LEGAL CHALLENGES RELATING TO EXEMPTION QUESTIONS ARE BEING RAISED, IT IS NECESSARY FOR THE ASSESSORS TO BE ABLE TO HAVE THESE REGULATIONS FOR USE WHEN COMMENCING THEIR ANNUAL ACTIVITIES ON JULY 1, 1988. AS W.VA. CODE § 11-3-1 ET SEQ. REQUIRES ASSESSORS TO COMMENCE THEIR ACTIVITIES ON JULY 1 OF EACH YEAR AND TO COMPLETE THOSE ACTIVITIES BY THE FOLLOWING JANUARY 31, THEY WOULD BE REQUIRED TO WAIT UNTIL JULY 1, 1989 IF THE REGULATIONS WERE NOT AVAILABLE IMMEDIATELY. AS A RESULT, THE PUBLIC WELFARE WOULD SUFFER GREATLY, CONFUSION ON THE PART OF ASSESSORS RELATING TO EXEMPTION QUESTIONS WOULD CONTINUE, THE AMOUNT OF JUDICIAL ACTIVITY WOULD INCREASE FURTHER, AND SUBSTANTIAL HARM TO THE PUBLIC INTEREST WOULD RESULT.

In order to prevent administrative agencies from abusing the provisions of the aforesaid statute, the Legislature has authorized you, in your capacity as Secretary of State, to disapprove the filing of a proposed legislative rule as an emergency under certain circumstances set forth in W.Va. Code, § 29A-3-15(a). In that connection, subparagraph (b) of Section 15(a) provides as follows:

(b) The secretary of state shall disapprove an emergency rule if he determines:

(i) that the agency has exceeded the scope of its statutory authority in promulgating the emergency rule;

(ii) that an emergency rule does not exist justifying the promulgation of the rule; or

(iii) that the rule was not promulgated in compliance with the provisions of section 15 of this article.

It is the position of the Association that the State Tax Department has failed to meet two of the three criteria set forth in Subparagraph (b) above and that the proposed emergency filing should therefore be disapproved.

1. An Emergency Does Not Exist Justifying The Promulgation Of The Rule.

The proposed emergency rule is entitled, "Exemption Of Property From Ad Valorem Property Taxation." However, as is evidenced by the representations made by the State Tax Department to justify its filing as an "emergency" rule, the obvious intent of the Department will be to increase the existing tax base of the State of West Virginia in an area which has heretofore been relied upon by charitable enterprises such as not-for-profit hospitals and other health care providers to subsidize in part their respective abilities to provide indigent and below-cost medical care to their respective patients. As you are aware, the subject of taxation has generated little, if any, unanimity between the executive and legislative branches in the past several years and it is the position of the Association that the consequences of the proposed emergency rule with respect to the tax base for the State of West Virginia is but another reason why the legislative rule-making review committee should not be bypassed by allowing the proposed rule to be filed as an "emergency."

More importantly, the "emergency" relied upon to support the filing of the proposed rule as an emergency with your office is the decision of the West Virginia Supreme Court of Appeals issued in State ex rel. Cook v. Rose, 299 S.E.2d 3 (W.Va. 1982). The opinion in this case was issued by the West Virginia Supreme Court of Appeals on December 9, 1982. More than five years have elapsed since this decision, six regular sessions of the Legislature have been held, as well as countless special sessions of the Legislature, and yet the State Tax Department has not seen fit to submit the regulations covered by the proposed rule to the legislative rule-making review committee until after the same were filed as an emergency rule.

In addition to the foregoing, the State Tax Department did promulgate, in substantially similar form, regulations covered by the proposed emergency rule as "Proposed West Virginia Legislative Regulations." The face of this document indicates that it was filed with your office on December 5, 1986, and a copy thereof is annexed hereto as "Association Exhibit No. 1." Even if this filing did not occur, it clearly indicates that the State Tax Department was in a position as early as December 1986 to submit the regulations covered by the proposed emergency rule to the legislative rule-making review committee for its review and comment but obviously chose not to do so. Under similar circumstances, federal law governing administrative procedure and "good cause" exceptions to federal administrative procedures, courts have held that time pressures caused by an agency's own delay will not justify dispensing with the procedural requirements established by Congress. National Association of Farm Workers v. Marshal, 628 F.2d 604 (D.C. Cir. 1980). In this case, the Court emphasized that the allegation of "good cause" to suspend the procedural rule-making requirements must be supported by more than the bare need to have the regulations themselves. Id. at 621.

In view of the foregoing, it is the position of the Association that if in fact an emergency does exist, the same was created by the delay of the State Tax Department in implementing the decision by the West Virginia Supreme Court of Appeals in Cook. Accordingly, by analogy to federal law, the obvious need

of the State Tax Department to have the regulations should not be considered adequate reason for bypassing the legislative rule-making review committee.

2. The Agency Has Exceeded The Scope Of Its Statutory Authority In Promulgating The Emergency Rule.

The proposed emergency rule is replete with regulations which purport to extend the powers of the State Tax Commissioner and the State Tax Department. Some of these regulations are obviously unconstitutional or in inherent conflict with statutory powers currently being exercised by other agencies of the State of West Virginia.

A typical example of the foregoing problem is found in Section 24.11 of the regulation, which provides in pertinent part as follows:

> A hospital may charge reasonable fees for the services that it provides to a patient. These charges may include a reasonable amount above the actual cost of services for the future use of the hospital.

It is important to note that the Cook case was decided some two years before the Legislature created the West Virginia Health Care Cost Review Authority. The latter agency now virtually regulates every facet of hospital operations in the State of West Virginia, including rates. In addition, 100% of each hospital's rates are regulated either by the Authority, the Medicare program or the Medicaid program. The regulatory power of the Authority and the federal programs is predicated upon statute as opposed to regulation. Obviously, the attempt by the Commissioner or the State Tax Department to further regulate these rates would be in conflict with the statutes in question. In addition, to the extent that the above-quoted regulation purports to regulate Medicare and Medicaid reimbursement, it would be in conflict with the Supremacy Clause of the United States Constitution.

The example noted above is but one of many examples of the problems created by the regulations covered by the proposed emergency rule. However, it clearly establishes that the State Tax Department has exceeded its authority in promulgating the proposed rule as an emergency and is but another reason for disapproving the same as an emergency rule.

In view of the foregoing, the Association respectfully requests that you, in your capacity as Secretary of State, disapprove the filing of the proposed rule as an "emergency rule" since no actual emergency exists and the State Tax Department has clearly exceeded its statutory authority in promulgating and filing the same as an emergency rule.

Very truly yours,

George G. Guthrie

George G. Guthrie

GGG/jfd

Enclosure

cc: Hon. Michael E. Caryl

OFFICE OF THE TAX COMMISSIONER

MICHAEL E. CARYL

DATE: 7/28, 19 88 LOG NO. 88-TL-598

TO: John Montgomery

SUBJECT. _____

PLEASE:

_____ Prepare a response for _____ signature with copy(s) to _____

✓ Note

_____ Approve

_____ Return

_____ Take Appropriate Action

AND

_____ Return to _____

_____ Forward to _____

_____ Retain

_____ Discard

✓ See me

REMARKS:

RECEIVED
1988 JUL 27 AM 9:10
STATE TAX DEPARTMENT
LEGAL DIVISION

West Virginia Legal Services Plan, Inc.

Suite 700
1033 Quarrier Street
Charleston, W. Va. 25301

Phone (304) 342-6814
(Toll Free) 1/800/642-8279

James P. Martin
Program Director

July 14, 1988

RECEIVED
1988 JUL 21 AM 11:00
STATE TAX DEPARTMENT
LEGAL DIVISION

Michael E. Caryl
State Tax Commissioner
State Capitol
Charleston, WV 25305

RE: Comments on Proposed Rules
Filed July 1, 1988, §§110-3-24
(Charitable Hospitals).

Dear Commissioner Caryl:

In response to your notice, published in the July 8, 1988 edition (Vol. V, No. 28) of The State Register, I am submitting comments on one portion of your proposed rules relating to Exemption of Property from Ad Valorem Property Taxation. Since the rules were also filed as emergency rules, effective July 1, 1988, my comments also relate to that filing.

As recited in detail in my letter and comments of March 11, 1988, I represent a number of clients who have experienced problems in being considered for free or below-cost medical care by charitable hospitals. To avoid burdening the record, I will not repeat any of the factual statements made in that previous letter, and ask instead that it be fully incorporated, by reference, in the record of comments on your proposed rules as filed on July 1, 1988.

From the perspective of medically indigent persons, your most recent proposal (and the identical emergency rule) strikes an appropriate balance between two competing interests: the need to assure that all charitable hospitals share in providing a reasonable volume of charity care, and the need to avoid burdening them with a level of such care which causes them to forswear tax-exempt status, thereby depriving the medically indigent of their services. As I stated in my letter of March 11, 1988, these rules cannot be expected to solve the entire problem of medical care for the indigent, but they can deal responsibly with one major piece of the puzzle.

I anticipate negative comments by hospitals in response to the provisions of §110-24.8, which state the hospital's duty to provide charity care and define charity care to not include bad debts. I respond by contrasting your approach to that taken by other jurisdictions, which require strict proof that charitable

hospital property is used exclusively for charitable purposes "either through the nonreciprocal provision of services or through the alleviation of a governmental burden . . .". e.g. Utah City v. Intermountain Health Care, 709 P. 2d 265 (Utah 1985).

The key to assurance that promise becomes reality in any system which requires provision of a "reasonable volume" of charity care, as required and measured by your proposed §110-24.8.5, is a parallel recordkeeping requirement such as that required by §110-24.8.6. Such basic recordkeeping provisions can help overworked assessors in their annual determination of charitable status by providing a sort of "audit trail" for measuring compliance. The key to fairness in the distribution of charity care lies in your requirements for posted and oral notice to patients, to ensure that consideration for such charity care is dispensed in an even-handed manner. Together, these substantive and procedural requirements in your §§110-24.8 can alleviate or eliminate the ad-hoc, inherently irrational systems documented in my comments of March 11, 1988.

Thank you for the opportunity to comment on these proposed and emergency rules, and for your balanced approach to the difficult issues presented. Please contact me if any of my comments require clarification or amplification.

Sincerely,

John Purbaugh
Attorney at Law

JCP:jm

cc: John Montgomery
Bruce Perrone
Sandra Rhodes

ST.
JOSEPH'S
HOSPITAL

July 25, 1988

The Honorable Michael E. Caryl
State Tax Commissioner
State Capitol
Charleston, WV 25301

Re: Emergency Legislative Rule: Exemption of Property from Ad Valorem Property Taxation

Dear Commissioner:

Please consider the following written comments with respect to the current draft of the above referenced Emergency Legislative Rule in your final revisions thereof. For ease of reference, we have categorized our comments by referring to the paragraph numbers set forth in the proposed rule.

24.4 Physician Office Space.

(a) It should be made clear that it is both appropriate and desirable to provide space within the Hospital facilities for all physicians to use in connection with the treatment of their patients. Examples of such spaces would include medical reference library, space to consult with other physicians regarding treatment, space to dictate notes regarding patient's progress, etc.

(b) It is essential that Hospitals be permitted to provide space to certain hospital based physicians, including, but not limited to, radiologists, pathologists, and emergency room physicians, in connection with the fulfillment of their contracts to provide such services. Because of the unique nature of such medical services, it is not feasible, nor is it generally consistent with the State Health Plan, to provide such services in as many locations as their might be specialists to provide them. It is, therefore, necessary that the Hospital be permitted to contract with a limited number of physicians for such services and that it be further permitted to provide office space for such physicians to utilize in connection with the provision of such services.

19th Street and Murdoch Ave. Parkersburg, WV 26101 1-304-424-4111

24.8 Admissions and Ability to Pay.

(a) The Hospital's ability to provide charity care is dependent upon its financial condition. The Hospital must have the flexibility to determine those most in need of charity care as it lacks the resources to provide such care indiscriminately.

(b) The Hospitals must have the ability to limit utilization of services by those not able to pay to necessary services.

(c) The requirement of notifying each uninsured person of the charity care policy is another unnecessary documentation, since not every uninsured person is a candidate for free or below cost care.

24.9 Private Gain.

(a) Salaries paid to employees and staff must be competitive within the health care industry. Top administrative staff are generally recruited nationwide, not merely within 100 miles outside the contiguous borders of West Virginia. In order to attract the best people, the salaries must be competitive with what such positions command around the country.

(b) Any surplus of revenue over expenses must be available to the Hospital for purposes other than providing charitable care. For example, it must also be used for capital expenditures in excess of funded depreciation. This is necessitated by both technological advances and more expensive equipment and by simple inflation. The regulation should be clarified to indicate that such expenditures are in furtherance of the Hospital's charitable activities.

24.10 Open Medical Staff.

(a) Hospitals have high liability exposure with respect to their monitoring of physicians. They must, therefore, be able to exclude physicians who do not meet competency requirements and qualifications established for membership on the medical staff. The Hospital's ability to so limit membership is already significantly restricted by anti-trust considerations. There is no need for Hospitals to meet any additional standards in this regard. The issuance of a license to practice medicine by the West Virginia Board of Medicine is an indication only that a individual meets the minimum educational requirements at the time of his or her application for such license, and as such, while it should be considered a necessary requirement for membership on the medical staff, it should certainly not be considered sufficient.

24.11 Charges and Fees.

(a) In order to meet the challenges imposed on Hospitals by reduced reimbursement and diminished utilization, many hospitals have sought to enter into joint ventures and other business opportunities. The freedom to do so is necessary in order to maintain the Hospital's financial and economic viability. A requirement that the revenues be used solely for maintenance and support of the Hospital could be construed so narrowly as to prohibit Hospitals from entering into such ventures or opportunities. This would, in our opinion, be counter-productive over the long term, as it simply further reduces the Hospital's ability to generate revenue.

24.12 Voluntary Contributions and other Revenue.

(a) The Hospital should have the freedom to use unrestricted voluntary contributions in a way which provides the greatest good to the greatest number of people. Circumstances, might indicate that such contributions would be more effectively utilized in a manner other than the direct provision of free or below cost care to patients who cannot afford to pay for it.

Thank you for your consideration of these comments. If you have any questions regarding them, please feel free to ask.

Very truly yours,

ST. JOSEPH'S HOSPITAL
OF PARKERSBURG

James A. Backus
Sr. Vice-President and Chief
Financial Officer

JAB:fg

cc: Gil DeLaura, Esquire
Vice-President and General Counsel
West Virginia Hospital Association

OFFICE OF THE TAX COMMISSIONER

MICHAEL E. CARYL

DATE: 7/29 19 88 LOG NO. 88-TL-619

TO: John Montgomery

SUBJECT: _____

PLEASE:

_____ Prepare a response for _____ signature with copy(s) to _____

✓ Note

_____ Approve

_____ Return

✓ Take Appropriate Action

AND

_____ Return to _____

_____ Forward to _____

_____ Retain

_____ Discard

_____ See me

REMARKS:

RECEIVED
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STATE TAX DEPARTMENT
LEGAL DIVISION

ST. JOSEPH'S HOSPITAL
PARKERSBURG, WEST VIRGINIA 26101

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The Honorable Michael E. Caryl
State Tax Commissioner
State Capitol
Charleston, WV 25301

CALHOUN GENERAL HOSPITAL

July 28, 1988

Mr. Michael E. Caryl
State Tax Commissioner
State Capitol
Charleston, WV 25301

Re: Exemption of Property from Ad Valorem Property Taxation

Dear Sir:

Most of the points that could affect the exemption of hospitals are understandable, (that is, physician office space rentals, charity care policy, private gain (excessive salaries), restricted access to medical staff and charges used only for support of hospital). However, the matter of voluntary contributions being used for the providing of free or below cost care is not as understandable.

Charity care is not limited to a certain dollar amount at Calhoun General Hospital, it is delivered as those requests are reviewed and granted. The policy of directing general contributions to provide charity care would, in a manner, put a limit on the amount of free care allowed.

In addition, people making donations might do so only as specified donations, not wanting to see their general contribution used expressly for charity services. It is the intent of the contributor that his, or her, donation is a gift to the hospital, to be used most advantageously by the hospital.

This consideration, plus the burden on the hospital of additional record keeping, makes this a very unattractive issue for Calhoun General Hospital.

Sincerely,

Roger Jarvis
Assistant Administrator

RJ/lke

United Hospital Center

Clarksburg, West Virginia

August 4, 1988

Mr. Michael E. Caryl
State Tax Commissioner
State Capitol
Charleston, WV 25301

Dear Mr. Caryl:

I would like to voice several hospital concerns regarding the emergency rule concerning Exemption of Property from Ad Valorem Property Taxation.

Section 24.8.6, concerning Admissions and Ability to Pay, requires a hospital to "...create and maintain records demonstrating that such required criteria and mechanism are established, that such required policies have been posted and distributed, and which record any and all requests for free or below cost care, the deposition of such request, and the rational for such deposition." This is a very expensive and burdensome procedure for a hospital to follow, possibly requiring a full time person to be hired to implement this section. Many West Virginia hospitals are in serious financial difficulty, and this section of the rule will require additional resources to be expended.

Section 24.12.1.1, concerning Voluntary Contributions and Other Revenue, requires that "...Any funds from unrestricted voluntary contributions must be used to provide free or below cost services before being used for any other purpose....". If a hospital is willing and able to provide charity care, why should the State restrict the use of unrestricted voluntary contributions? The hospital is best able to determine how to finance the cost of free or below cost care. Contributions are often sporadic and unpredictable, and charity care is provided on a need basis, not on the basis of the amount of unrestricted contributions received for a set period of time.

Please consider these concerns when deciding upon the final form of the emergency rule. Thank you.

Very truly yours,

Sandra A. Price
General Counsel

cc: Bruce Carter
Sam Tiano

CHARLESTON AREA MEDICAL CENTER
501 Morris Street • P.O. Box 1547
Charleston, West Virginia 25326 • 304/348-7627

August 10, 1988

Mr. Michael E. Caryl
State Tax Commissioner
W-300 State Capitol Complex
Charleston, West Virginia 25301

Re: Emergency Regulations on Exemption of Property from Ad Valorem Property Taxes Filed July 1, 1988

Dear Commissioner Caryl:

Charleston Area Medical Center, Inc. desires to provide constructive input into consideration of the captioned regulations. It is my observation that the regulations as currently drafted show considerable improvement over those that were issued in proposed form over a year ago. In particular, CAMC is appreciative of the responsiveness to the prior input on behalf of hospitals that is exhibited by these regulations. However, we still have a number of concerns, both general and specific. The comments offered herein are not exhaustive, but do provide some input with respect to the major areas of concern to CAMC.

1. The regulations are in need of considerable clarification and further definition in many areas. We are uncertain as to the meaning and intent of numerous provisions and feel that the ambiguity that we detect in the regulations will cause considerable uncertainty and uneven application as tax assessors attempt to apply the regulations to property owned by hospitals. As you will see from some of the comments that follow, in many areas the ambiguities can be dealt with by eliminating certain provisions which we feel are unnecessary.

2. One area of uncertainty relates to the basic nature of non-profit hospitals. Unfortunately, the definitions in the regulations indicate that for a hospital to be eligible for any of its property to be tax-exempt it must be "charitable," meaning of or for charity. "Charity" is defined as a "gift." While non-profit hospitals generally and certainly CAMC in particular provide a considerable amount of what is generally referred to as "charity care," like any other corporation, a non-profit hospital must operate with a positive bottom line in order

to prevent the deterioration of facilities, make technological advances and so forth. Thus, it would seem that a hospital should be eligible for holding tax-exempt property as long as that property is being used in the rendering of health care services on a non-profit basis and not necessarily and certainly not entirely on a charitable basis.

3. The various provisions of the regulations with respect to a hospital's relationship with physicians are confusing and difficult to apply to the modern hospital setting, particularly that found in a large medical center. The types of relationships that hospitals have with physicians are many and varied depending upon the needs of the hospital, the physicians and those being treated. There are many gray areas in determining what the regulations intend to say about "staff physicians," "affiliated physicians" and "members of [the hospital's] staff." With respect to office space, perhaps a more general statement which would avoid the predominant use of hospital property by physicians for private practice would achieve the desired end without requiring detailed scrutiny with respect to individual arrangements which may be necessary for the convenience of physicians and the hospital in rendering health care services.

4. Section 24.10 with respect to "open medical staff" raises specific concerns. While the recognition of the hospital's retention of the determination of competency and qualification pursuant to its own procedures is very welcome, the possibility of close scrutiny with respect to restrictions on the medical staff is intimidating. The hospital with a large medical staff broken into various departments and containing various levels of membership is an extremely complex organization and various restrictions may be desirable for the efficient provision of health care services. The threat of adverse affect on property tax exemption by medical staff restrictions, many of which are matters dealt with by the medical staff itself rather than being initiated by the hospital, could be extremely burdensome and inefficient. Other questions, such as the effect of these regulations on exclusive-type contracts in areas such as radiology and emergency medicine, which arrangements have been consistently upheld by the courts as being legitimate methods of achieving hospital efficiency, could also be called into question.

5. A substantial portion of the regulations concern the hospital's policy on admissions and ability to pay. Due to the well-documented and inordinately high amount of charity care provided by CAMC, I have to say that I cannot conceive that there

would be a serious question about the legitimacy of CAMC's tax exemption on its property based on any allegation that CAMC did not provide sufficient "charity care." However, I am concerned about the regulatory aspects of demonstrating compliance with the regulations in this area. Section 24.8 contains references to certain policies which must be put into effect, procedures which must be established and records which must be maintained. I would suggest that some general showing of the charity care rendered by the hospital should be sufficient to respond to any concern in this area without the need for a set of specific policies and procedures which must be followed and records which must be maintained.

6. There are numerous references to the paying of salaries and compensation to employees and staff. I suggest that there are actual controls which ensure that hospitals do not pay unreasonable compensation without the same question having to be determined by the tax assessors. Competitive factors and health care regulations virtually assure that compensation is within the realm of reason. Section 24.9.2 is particularly bothersome to a large medical center such as CAMC. It is stated that salary comparisons for the purpose of determining reasonableness of compensation can be made to hospitals outside of West Virginia only if they are within one hundred miles of the borders of West Virginia. A major medical center such as CAMC competes for personnel with other similar institutions nationwide and not on a statewide or regional basis. The regulation as it is currently written would virtually eliminate institutions comparable to CAMC for purposes of developing salary comparisons. This would severely impede the ability of CAMC to acquire and retain competent and experienced personnel.

7. Section 24.16.1 with respect to hospital-owned housing also raises concerns. It leaves open the question of the tax-exempt status of housing for doctors, nurses, interns, technicians and other hospital personnel which is not owned by the hospital itself but is still provided for the benefit of the hospital and its staff and operated on a non-profit basis. It is also difficult to understand why such housing must be located on the same tract of land as the hospital. Particularly with respect to medical students and residents, the academic and transitional nature of those roles necessitates convenient and affordable housing reasonably proximate to the hospital facilities but which may not be able to meet the specific requirements of this section.

I hope that you will consider the above comments and afford an opportunity for further discussion of these and other

points so that the regulations may be applied in a manner fair to hospitals as well as the public. Any further discussion or information with respect to these regulations would be welcome by me or Marshall McMullen, General Counsel for CAMC.

Very truly yours,

Phil Goodwin

Phillip H. Goodwin, F.A.C.H.E.
President

PHG:cbh

cc: Marshall A. McMullen, Jr., Esquire

West Virginia Legal Services Plan, Inc.

Suite 700
1033 Quarrier Street
Charleston, W. Va. 25301

Phone (304) 342-6814
(Toll Free) 1/800/642-8279

James P. Martin
Program Director

August 9, 1988

RECEIVED
1988 AUG 10 PM 1:00
STATE TAX DEPARTMENT
LEGAL DIVISION

The Honorable Ken Heckler
Secretary of State
State Capitol Complex
Charleston, WV 25305

RE: State Tax Department,
Title 110, Series 3 Rules
Relating to Exemption of
Property From Ad Valorem
Property Taxation.

Dear Secretary Heckler:

I represent a number of poor clients who have experienced problems in being considered for free or below-cost medical care by charitable hospitals. On behalf of these clients, I am contacting you with regard to the above-referenced Emergency Rule, filed with your office on July 1, 1988, to request that you **approve** the same as an emergency filing under W. Va. Code §§29A-3-15 and 15a.

I. Background.

Representing the same clients, I have previously submitted comments on the proposed rule to the Tax Department, and have corresponded with the Tax Commissioner regarding the need for immediate rulemaking on these topics. In addition to submitting new information at this time to your office, I will refer in this letter to my previous correspondence, comments, and documents already submitted to the Tax Commissioner as a part of the administrative record.

Under Code §29A-3-15(g), an emergency exists if promulgation of a rule is necessary for "the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest." Information previously submitted to the Tax Commissioner and other available information, as summarized below, clearly shows that the emergency promulgation of these rules is necessary both for the preservation of public health and welfare, and to prevent substantial harm to the public interest.

II. Scope and Standard of Review.

Under Code §29A-3-15a(b), the scope of your review of the Tax Commissioner's action in promulgating this emergency rule is limited to three factors: whether the agency has exceeded the scope of its statutory authority, whether an emergency exists justifying an emergency rule, and whether the rule was promulgated in procedural compliance with §29A-3-15.

In their letter to you dated July 26, 1988, counsel for the West Virginia Hospital Association has asked that you disapprove of this emergency filing on the first two of these three grounds. In their letter, the Association argues the merits of each of these factors, in effect urging you to accept their characterization of the Tax Commissioner's statutory authority and their view that no emergency exists in lieu of the contrary judgment by the Commissioner. In our view, the standard of your review of the Tax Commissioner's action in filing these emergency rules should be performed under the "substantial evidence" test. Under this approach, your role is not to determine in a vacuum whether the requisite statutory authority or emergency conditions exist, but to instead satisfy yourself that the Tax Commissioner's determination of an emergency is supportable by evidence before him or reviewed by yourself. However, under either approach, these emergency regulations are clearly within the Tax Commissioner's statutory authority to promulgate and are necessary to address an emergency situation as defined in the Code.

III. Statutory Authority.

The Association argues that these rules are in conflict with statutory powers being exercised by other agencies, particularly the West Virginia Health Care Cost Review Authority, and that by addressing matters, including charity care, also regulated by HCCRA, these rules exceed the Tax Commissioner's authority. The Association's counsel has neglected to inform you that HCCRA, in a parallel rulemaking process,[1] has proposed rules which explicitly recognize the primary authority of the Tax Commissioner's regulations on the issue of charity care by non-profit hospitals. §2.8.1 of these HCCRA rules (copy attached) provides that "compliance with the Tax Department's regulations will be sufficient evidence for a determination that a non-profit hospital's level of uncompensated care is satisfactory." Any alleged "conflict" between these rules and HCCRA rules does not bear even minimal factual scrutiny, let alone rise to the level of an act exceeding the Tax Commissioner's statutory powers. The direct order to the Tax Commissioner by the Supreme Court of Appeals to address the issue of charity care by non-profit hospitals, to "issue specific and clear regulations, guidelines, forms and instructions . . . to assure their continuing enforcement" and stating that the "constitutional standard . . . requires provisions of free and below-cost services to those unable to pay"[2] further resolves any issue of statutory authority. Not only does the Commissioner have the authority to promulgate these rules, he has a mandatory, court-ordered duty to do so. This duty is one which, without emergency promulgation of these regulations, I have informed Commissioner Caryl of my intent to enforce for the benefit of my clients.

IV. An Emergency Exists.

Approximately 30,000 West Virginians lack health insurance, of which about one-third are children, and of which nearly 40% are living in families with

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[1] HCCRA, Title 16-29B legislative rule amendments, to Series V, "Hospital Cost Containment Methodology-Phase I", filed July 18, 1988.

[2] Cook v. Rose, 299 S.E. 2d 3, 8 (W. Va. 1982).

incomes lower than the federal poverty level.[3]

Though there has been a general recognition in West Virginia law since Adkins v. St. Frances Hospital, 149 W. Va. 705 (1965) that non-profit hospitals have a duty to provide some level of charity care, no regulatory standards or enforcement mechanism have, until the filing of these regulations on July 1, 1988, been available. As documented in the attachments to my letters of March 11, 1988 and July 14, 1988 to Commissioner Caryl, the result has been that poor West Virginians, uninsured and not covered by governmental health benefit programs, have been denied charity care. As documented by sworn statements and public documents attached to my March 11, 1988 letter, without these regulations a hospital can: (1) tell HCCRA that it has a charity care policy; (2) fail to inform patients of their charity care policy; and (3) report charity care and bad debt as a combined single figure, making it impossible to determine the extent to which charity care is actually provided. In particular, I draw your attention to the sworn statements of Sandra Rhodes, in ¶12-21 of the enclosed Answer filed in CA #87-C-183 in the Circuit Court of Braxton County, (This document was attached to my March 11, 1988 letter).

Under Art. 3, §10 of the State's Constitution, due process requires that the people receive the benefit of legislative enactments. Hodges v. Ginsberg, 303 S.E. 2d 245 (W. Va. 1983). Legislative provisions exempting certain property, including charitable hospital property, from taxation carry the requirement that such hospitals provide charity care. Cook v. Rose, supra. In the current climate of uninsured and unserved medical needs of poor West Virginians, regulations setting standards for the provision of charity care and mechanisms for their enforcement manifestly are necessary to preserve public health and welfare, and to prevent further substantial harm to the public interest.

V. Conclusion.

As stated in my letters to Commissioner Caryl, I do not suggest that the entire problem of indigent access to health care should or could be solved in these regulations. However, charity care provided by non-profit, tax-exempt hospitals is a large piece of the larger puzzle. Commissioner Caryl has commendably discharged his mandatory duty to promulgate regulations on this topic, and has recognized the need for an emergency filing. For all of these reasons, you should approve the emergency filing pursuant to W. Va. Code §29A-3-15a. If you desire any further information, please call me.

Sincerely,

John Purbaugh

John Purbaugh
Attorney-at-Law

JCP:jm

Attachments

---

[3] "West Virginians Without Health Insurance-A Growing Crisis", W. Va. Citizens Action Group, June 1, 1988 (copy attached).

WEST VIRGINIA HOSPITAL ASSOCIATION

September 6, 1988

John Montgomery, Esq.
Office of the Commissioner
State Tax Department
Charleston, West Virginia 25301

Re: Proposed Legislative Regulations
For Exemption of Property From
Ad Valorem Property Taxes

Dear Mr. Montgomery:

The following comments relate to proposed regulations as described above and filed with the Secretary of State on July 1, 1988.

General Comments

The regulations as written fail to recognize the diversity of generally accepted charitable activity. Emphasis in the proposed rules exclusively upon hospital admissions and ability to pay, while ignoring other criteria, unduly restricts the concept of charity. The rendition of free care should not be the sole chief factor to be considered. See: Eastern Kentucky Welfare Rights Organization v. Simon, 506 F.2d 1278 (D.C. Cir. 1974), vac. other grounds, 426 U.S. 26 (1976), Harvard Community Health Plan v. Board of Assessors of Cambridge, 427 NE2d 1159 (1981). It is respectfully submitted that the regulations should, at a minimum, recognize alternative criteria which would constitute charitable activity, such as a "community benefit" standard, similar to that enunciated in IRS Revenue Ruling 69-545. The Internal Revenue Service did not list what community benefits a hospital

3422 Pennsylvania Avenue Charleston, West Virginia 25302 (304) 345-9842

must provide, but relied upon different factors by which the hospital conducted its affairs within the community, including the following:

- Medical staff membership possible for qualified physicians consistent with size and nature of hospital facilities;
- Provision of care to all persons in the community who could pay either directly or through third party reimbursement;
- Promotion of the health of a class of persons broad enough to benefit the community;
- Conduct of affairs to serve a public rather than private interest.

Under current federal standards, no single characteristic is by itself the determining factor relating to exemption. Although it is recognized that the Commissioner is in no way bound by federal exemption standards, it is respectfully suggested that the regulations be redrafted in order that the concept of charity is not unduly restricted to equate to relief of the poor.

A second general observation concerns the duplication in regulatory activity between the Commissioner and the West Virginia Health Care Cost Review Authority (the Authority). State Ex Rel. Cook v. Rose, 299 S.E.2d 3 (W.Va. 1982) was decided at a point in time when the Authority did not exist. Since its creation the Authority has exercised broad regulatory jurisdiction over hospitals. Additionally, hospitals in West Virginia are required by statute to fully fund the cost of operations of this state agency. Many of the draft regulations suggested here are unnecessarily duplicative of the regulatory responsibility invested

in the Authority. For example, some of the regulations in question require posting with respect to the policies of admission and treatment of indigent patients, detailed record keeping regarding indigent care, standards with respect to determining if salaries paid to hospital personnel are reasonable. Conversely, regulations of the Authority require hospitals at the current time to maintain records similar to those proposed by the draft regulations proposed by the Commissioner.

Specific Comments

§19.1 indicates that charities must be exempt from federal income taxes under 26 USC §501 (c)(3) or §501 (c)(4). This section ignores other types of recognized charitable organizations, many of which exist due to hospital restructuring.

§24.3 Ownership of property at page 34 is unclear. The proposed regulation does not indicate what disposition would be made of a lease between two tax exempt entities.

§24.4 Office Space for Staff Physicians.

This section as written is also unclear, and does not provide hospitals with knowledge of when office space may and may not be furnished to physicians. Additionally, the fact that a hospital rents office space to a physician

at commercial market rates should not, in itself automatically create the inference that the property is being used for non-charitable purposes. Indeed, in some areas of West Virginia, provision of office space, especially for physicians new to the community may be the only way for the hospital to recruit new medical staff.

§24.8 Admissions and the Ability to Pay.

Charitable purposes of a hospital are not confined to the provision of free or below cost care. The regulations in their present form overstate this concept and ignore the public benefit existence of many hospital services offered to their communities. The narrow regulations also duplicate the function of the West Virginia Health Care Cost Review Authority. Public notice by use of wallspace is misplaced. Hospitals are presently running out of room to post all of the regulatory notices required by both federal and state regulatory authorities.

§24.9 Private Gain or Benefit.

As a general comment, the statement appearing at §24.9.1: "No benefit shall inure to any . . . trustee [or] director . . . . associated with the hospital" should be further clarified. As you are aware, some individual members of the board of trustees of a hospital may do business with that hospital. In some instances, a commercial activity operated by a trustee may be the only vendor available to fulfill a particular need. Read literally, this section would prohibit the realization

of any income by a director. It is recommended that this section of the proposed rules be revised so that the benefit, to be impermissible must be "direct" or "immediate."

§24.10 Open Medical Staff.

These provisions, although modified, remain particularly troublesome. The second sentence of §24.10.2 indicates that:

> "any restrictions on the hospital's medical staff will be closely scrutinized in determining whether or not the hospital is exempt."

It is respectfully suggested that the Tax Commissioner's point of interest should be confined to the question of whether or not the facility is being used for the benefit of a limited group of individuals. See Revenue Ruling 69-545. The way in which this regulation is written any physician who, for good reason, is not admitted to a medical staff can attempt to use these regulations as a harassment device against the hospital. Also, regulations issued by the Department of Health and Human Services prescribe specific federal requirements for access to hospitals by various categories of health care providers. The proposed rule exemplifies another unwarranted tier of regulation.

§24.11 Charges and Fees.

Any revenue that the hospital realizes from its charges and fees should be used not only for the maintenance and support of the hospital but for the furtherance of any charitable activity. Voluntary contributions received by a hospital should be used for any legitimate charitable activity. It is again respectfully suggested that a hospital surplus should be used in any

legitimate manner approved by the hospital board of trustees. The regulation concerning specialized equipment is unrealistic, unnecessary, and is another intrusion into the realm of hospital decision making. The board of trustees should, in their local communities have superior knowledge and health care decision making ability concerning the charitable application of surplus funds. The only two principles which should be of concern to the Commissioner are:

1. The surplus is used in furtherance of the charitable activities of the organization.

2. Accordingly, any surplus may not be used for the direct and immediate benefit of any private individual, entity or interest.

May I express the appreciation of the West Virginia Hospital Association for the opportunity to submit these comments for your consideration.

Sincerely,

Gil DeLaura, Esq.
Vice President/General Counsel

GD/dsm

LAW OFFICES

SPILMAN, THOMAS, BATTLE & KLOSTERMEYER

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July 26, 1988

Hon. Ken Hechler
Secretary of State
State Capitol Complex
Charleston, WV 25305

Re: State Tax Department; Title 110; Series 3, Exemption Of Property From Ad Valorem Property Taxation

Dear Secretary Hechler:

This firm represents the West Virginia Hospital Association ("Association") in connection with the referenced matter.

On July 1, 1988, the State Tax Department filed with your office the referenced Emergency Rule entitled, "Exemption Of Property From Ad Valorem Property Taxation." The Association respectfully objects to the filing of the proposed rule as an "emergency" and requests that you disapprove the same as an emergency filing under your statutory authority.

The filing of the proposed rule as an emergency is an obvious attempt by the State Tax Department to bypass the legislative rule-making review committee with respect to the controversial issue of taxation. However, the ability of an administrative agency such as the State Tax Department to take such action is limited by statute to instances where an actual emergency exists. In that connection, W.Va. Code, § 29A-3-15(g) provides as follows:

> For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or

by a federal statute or regulation or to prevent substantial harm to the public interest.

The circumstances relied upon to justify the filing of the proposed rule as an "emergency" as set forth therein are represented to be as follows:

> STATE EX REL. COOK V. ROSE, 299 S.E.2d 3 (W.VA. 1982) REQUIRES THE STATE TAX COMMISSIONER TO ISSUE CLEAR AND SPECIFIC REGULATIONS AND GUIDELINES TO ASSIST ASSESSORS IN DETERMINING QUESTIONS OF EXEMPTION FROM AD VALOREM PROPERTY TAXATION. BECAUSE THERE ARE NO UNIFORM GUIDELINES CURRENTLY IN EXISTENCE AND DUE TO THE FACT THAT MORE COMPLEX ISSUES AND LEGAL CHALLENGES RELATING TO EXEMPTION QUESTIONS ARE BEING RAISED, IT IS NECESSARY FOR THE ASSESSORS TO BE ABLE TO HAVE THESE REGULATIONS FOR USE WHEN COMMENCING THEIR ANNUAL ACTIVITIES ON JULY 1, 1988. AS W.VA. CODE § 11-3-1 ET SEQ. REQUIRES ASSESSORS TO COMMENCE THEIR ACTIVITIES ON JULY 1 OF EACH YEAR AND TO COMPLETE THOSE ACTIVITIES BY THE FOLLOWING JANUARY 31, THEY WOULD BE REQUIRED TO WAIT UNTIL JULY 1, 1989 IF THE REGULATIONS WERE NOT AVAILABLE IMMEDIATELY. AS A RESULT, THE PUBLIC WELFARE WOULD SUFFER GREATLY, CONFUSION ON THE PART OF ASSESSORS RELATING TO EXEMPTION QUESTIONS WOULD CONTINUE, THE AMOUNT OF JUDICIAL ACTIVITY WOULD INCREASE FURTHER, AND SUBSTANTIAL HARM TO THE PUBLIC INTEREST WOULD RESULT.

In order to prevent administrative agencies from abusing the provisions of the aforesaid statute, the Legislature has authorized you, in your capacity as Secretary of State, to disapprove the filing of a proposed legislative rule as an emergency under certain circumstances set forth in W.Va. Code, § 29A-3-15(a). In that connection, subparagraph (b) of Section 15(a) provides as follows:

(b) The secretary of state shall disapprove an emergency rule if he determines:

(i) that the agency has exceeded the scope of its statutory authority in promulgating the emergency rule;

(ii) that an emergency rule does not exist justifying the promulgation of the rule; or

(iii) that the rule was not promulgated in compliance with the provisions of section 15 of this article.

It is the position of the Association that the State Tax Department has failed to meet two of the three criteria set forth in Subparagraph (b) above and that the proposed emergency filing should therefore be disapproved.

1. An Emergency Does Not Exist Justifying The Promulgation Of The Rule.

The proposed emergency rule is entitled, "Exemption Of Property From Ad Valorem Property Taxation." However, as is evidenced by the representations made by the State Tax Department to justify its filing as an "emergency" rule, the obvious intent of the Department will be to increase the existing tax base of the State of West Virginia in an area which has heretofore been relied upon by charitable enterprises such as not-for-profit hospitals and other health care providers to subsidize in part their respective abilities to provide indigent and below-cost medical care to their respective patients. As you are aware, the subject of taxation has generated little, if any, unanimity between the executive and legislative branches in the past several years and it is the position of the Association that the consequences of the proposed emergency rule with respect to the tax base for the State of West Virginia is but another reason why the legislative rule-making review committee should not be bypassed by allowing the proposed rule to be filed as an "emergency."

More importantly, the "emergency" relied upon to support the filing of the proposed rule as an emergency with your office is the decision of the West Virginia Supreme Court of Appeals issued in State ex rel. Cook v. Rose, 299 S.E.2d 3 (W.Va. 1982). The opinion in this case was issued by the West Virginia Supreme Court of Appeals on December 9, 1982. More than five years have elapsed since this decision, six regular sessions of the Legislature have been held, as well as countless special sessions of the Legislature, and yet the State Tax Department has not seen fit to submit the regulations covered by the proposed rule to the legislative rule-making review committee until after the same were filed as an emergency rule.

In addition to the foregoing, the State Tax Department did promulgate, in substantially similar form, regulations covered by the proposed emergency rule as "Proposed West Virginia Legislative Regulations." The face of this document indicates that it was filed with your office on December 5, 1986, and a copy thereof is annexed hereto as "Association Exhibit No. 1." Even if this filing did not occur, it clearly indicates that the State Tax Department was in a position as early as December 1986 to submit the regulations covered by the proposed emergency rule to the legislative rule-making review committee for its review and comment but obviously chose not to do so. Under similar circumstances, federal law governing administrative procedure and "good cause" exceptions to federal administrative procedures, courts have held that time pressures caused by an agency's own delay will not justify dispensing with the procedural requirements established by Congress. National Association of Farm Workers v. Marshal, 628 F.2d 604 (D.C. Cir. 1980). In this case, the Court emphasized that the allegation of "good cause" to suspend the procedural rule-making requirements must be supported by more than the bare need to have the regulations themselves. Id. at 621.

In view of the foregoing, it is the position of the Association that if in fact an emergency does exist, the same was created by the delay of the State Tax Department in implementing the decision by the West Virginia Supreme Court of Appeals in Cook. Accordingly, by analogy to federal law, the obvious need

of the State Tax Department to have the regulations should not be considered adequate reason for bypassing the legislative rule-making review committee.

2. The Agency Has Exceeded The Scope Of Its Statutory Authority In Promulgating The Emergency Rule.

The proposed emergency rule is replete with regulations which purport to extend the powers of the State Tax Commissioner and the State Tax Department. Some of these regulations are obviously unconstitutional or in inherent conflict with statutory powers currently being exercised by other agencies of the State of West Virginia.

A typical example of the foregoing problem is found in Section 24.11 of the regulation, which provides in pertinent part as follows:

> A hospital may charge reasonable fees for the services that it provides to a patient. These charges may include a reasonable amount above the actual cost of services for the future use of the hospital.

It is important to note that the Cook case was decided some two years before the Legislature created the West Virginia Health Care Cost Review Authority. The latter agency now virtually regulates every facet of hospital operations in the State of West Virginia, including rates. In addition, 100% of each hospital's rates are regulated either by the Authority, the Medicare program or the Medicaid program. The regulatory power of the Authority and the federal programs is predicated upon statute as opposed to regulation. Obviously, the attempt by the Commissioner or the State Tax Department to further regulate these rates would be in conflict with the statutes in question. In addition, to the extent that the above-quoted regulation purports to regulate Medicare and Medicaid reimbursement, it would be in conflict with the Supremacy Clause of the United States Constitution.

The example noted above is but one of many examples of the problems created by the regulations covered by the proposed emergency rule. However, it clearly establishes that the State Tax Department has exceeded its authority in promulgating the proposed rule as an emergency and is but another reason for disapproving the same as an emergency rule.

In view of the foregoing, the Association respectfully requests that you, in your capacity as Secretary of State, disapprove the filing of the proposed rule as an "emergency rule" since no actual emergency exists and the State Tax Department has clearly exceeded its statutory authority in promulgating and filing the same as an emergency rule.

Very truly yours,

George G. Guthrie

GGG/jfd

Enclosure

cc: Hon. Michael E. Caryl

West Virginia Legal Services Plan, Inc.

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James P. Martin
Program Director

August 9, 1988

The Honorable Ken Heckler
Secretary of State
State Capitol Complex
Charleston, WV 25305

RE: State Tax Department,
Title 110, Series 3 Rules
Relating to Exemption of
Property From Ad Valorem
Property Taxation.

Dear Secretary Heckler:

I represent a number of poor clients who have experienced problems in being considered for free or below-cost medical care by charitable hospitals. On behalf of these clients, I am contacting you with regard to the above-referenced Emergency Rule, filed with your office on July 1, 1988, to request that you **approve** the same as an emergency filing under W. Va. Code §§29A-3-15 and 15a.

I. Background.

Representing the same clients, I have previously submitted comments on the proposed rule to the Tax Department, and have corresponded with the Tax Commissioner regarding the need for immediate rulemaking on these topics. In addition to submitting new information at this time to your office, I will refer in this letter to my previous correspondence, comments, and documents already submitted to the Tax Commissioner as a part of the administrative record.

Under Code §29A-3-15(g), an emergency exists if promulgation of a rule is necessary for "the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest." Information previously submitted to the Tax Commissioner and other available information, as summarized below, clearly shows that the emergency promulgation of these rules is necessary both for the preservation of public health and welfare, and to prevent substantial harm to the public interest.

II. Scope and Standard of Review.

Under Code §29A-3-15a(b), the scope of your review of the Tax Commissioner's action in promulgating this emergency rule is limited to three factors: whether the agency has exceeded the scope of its statutory authority, whether an emergency exists justifying an emergency rule, and whether the rule was promulgated in procedural compliance with §29A-3-15.

In their letter to you dated July 26, 1988, counsel for the West Virginia Hospital Association has asked that you disapprove of this emergency filing on the first two of these three grounds. In their letter, the Association argues the merits of each of these factors, in effect urging you to accept their characterization of the Tax Commissioner's statutory authority and their view that no emergency exists in lieu of the contrary judgment by the Commissioner. In our view, the standard of your review of the Tax Commissioner's action in filing these emergency rules should be performed under the "substantial evidence" test. Under this approach, your role is not to determine in a vacuum whether the requisite statutory authority or emergency conditions exist, but to instead satisfy yourself that the Tax Commissioner's determination of an emergency is supportable by evidence before him or reviewed by yourself. However, under either approach, these emergency regulations are clearly within the Tax Commissioner's statutory authority to promulgate and are necessary to address an emergency situation as defined in the Code.

III. Statutory Authority.

The Association argues that these rules are in conflict with statutory powers being exercised by other agencies, particularly the West Virginia Health Care Cost Review Authority, and that by addressing matters, including charity care, also regulated by HCCRA, these rules exceed the Tax Commissioner's authority. The Association's counsel has neglected to inform you that HCCRA, in a parallel rulemaking process,[1] has proposed rules which explicitly recognize the primary authority of the Tax Commissioner's regulations on the issue of charity care by non-profit hospitals. §2.8.1 of these HCCRA rules (copy attached) provides that "compliance with the Tax Department's regulations will be sufficient evidence for a determination that a non-profit hospital's level of uncompensated care is satisfactory." Any alleged "conflict" between these rules and HCCRA rules does not bear even minimal factual scrutiny, let alone rise to the level of an act exceeding the Tax Commissioner's statutory powers. The direct order to the Tax Commissioner by the Supreme Court of Appeals to address the issue of charity care by non-profit hospitals, to "issue specific and clear regulations, guidelines, forms and instructions . . . to assure their continuing enforcement" and stating that the "constitutional standard . . . requires provisions of free and below-cost services to those unable to pay"[2] further resolves any issue of statutory authority. Not only does the Commissioner have the authority to promulgate these rules, he has a mandatory, court-ordered duty to do so. This duty is one which, without emergency promulgation of these regulations, I have informed Commissioner Caryl of my intent to enforce for the benefit of my clients.

IV. An Emergency Exists.

Approximately 30,000 West Virginians lack health insurance, of which about one-third are children, and of which nearly 40% are living in families with

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[1] HCCRA, Title 16-29B legislative rule amendments, to Series V, "Hospital Cost Containment Methodology-Phase I", filed July 18, 1988.

[2] Cook v. Rose, 299 S.E. 2d 3, 8 (W. Va. 1982).

incomes lower than the federal poverty level.[3]

Though there has been a general recognition in West Virginia law since Adkins v. St. Frances Hospital, 149 W. Va. 705 (1965) that non-profit hospitals have a duty to provide some level of charity care, no regulatory standards or enforcement mechanism have, until the filing of these regulations on July 1, 1988, been available. As documented in the attachments to my letters of March 11, 1988 and July 14, 1988 to Commissioner Caryl, the result has been that poor West Virginians, uninsured and not covered by governmental health benefit programs, have been denied charity care. As documented by sworn statements and public documents attached to my March 11, 1988 letter, without these regulations a hospital can: (1) tell HCCRA that it has a charity care policy; (2) fail to inform patients of their charity care policy; and (3) report charity care and bad debt as a combined single figure, making it impossible to determine the extent to which charity care is actually provided. In particular, I draw your attention to the sworn statements of Sandra Rhodes, in ¶12-21 of the enclosed Answer filed in CA #87-C-183 in the Circuit Court of Braxton County, (This document was attached to my March 11, 1988 letter).

Under Art. 3, §10 of the State's Constitution, due process requires that the people receive the benefit of legislative enactments. Hodges v. Ginsberg, 303 S.E. 2d 245 (W. Va. 1983). Legislative provisions exempting certain property, including charitable hospital property, from taxation carry the requirement that such hospitals provide charity care. Cook v. Rose, supra. In the current climate of uninsured and unserved medical needs of poor West Virginians, regulations setting standards for the provision of charity care and mechanisms for their enforcement manifestly are necessary to preserve public health and welfare, and to prevent further substantial harm to the public interest.

V. Conclusion.

As stated in my letters to Commissioner Caryl, I do not suggest that the entire problem of indigent access to health care should or could be solved in these regulations. However, charity care provided by non-profit, tax-exempt hospitals is a large piece of the larger puzzle. Commissioner Caryl has commendably discharged his mandatory duty to promulgate regulations on this topic, and has recognized the need for an emergency filing. For all of these reasons, you should approve the emergency filing pursuant to W. Va. Code §29A-3-15a. If you desire any further information, please call me.

Sincerely,

John Purbaugh
Attorney-at-Law

JCP:jm

Attachments

[3] "West Virginians Without Health Insurance-A Growing Crisis", W. Va. Citizens Action Group, June 1, 1988 (copy attached).

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James P. Martin
Program Director

July 14, 1988

Michael E. Caryl
State Tax Commissioner
State Capitol
Charleston, WV 25305

RE: Comments on Proposed Rules
Filed July 1, 1988, §§110-3-24
(Charitable Hospitals).

Dear Commissioner Caryl:

In response to your notice, published in the July 8, 1988 edition (Vol. V, No. 28) of The State Register, I am submitting comments on one portion of your proposed rules relating to Exemption of Property from Ad Valorem Property Taxation. Since the rules were also filed as emergency rules, effective July 1, 1988, my comments also relate to that filing.

As recited in detail in my letter and comments of March 11, 1988, I represent a number of clients who have experienced problems in being considered for free or below-cost medical care by charitable hospitals. To avoid burdening the record, I will not repeat any of the factual statements made in that previous letter, and ask instead that it be fully incorporated, by reference, in the record of comments on your proposed rules as filed on July 1, 1988.

From the perspective of medically indigent persons, your most recent proposal (and the identical emergency rule) strikes an appropriate balance between two competing interests: the need to assure that all charitable hospitals share in providing a reasonable volume of charity care, and the need to avoid burdening them with a level of such care which causes them to forswear tax-exempt status, thereby depriving the medically indigent of their services. As I stated in my letter of March 11, 1988, these rules cannot be expected to solve the entire problem of medical care for the indigent, but they can deal responsibly with one major piece of the puzzle.

I anticipate negative comments by hospitals in response to the provisions of §110-24.8, which state the hospital's duty to provide charity care and define charity care to not include bad debts. I respond by contrasting your approach to that taken by other jurisdictions, which require strict proof that charitable

hospital property is used exclusively for charitable purposes "either through the nonreciprocal provision of services or through the alleviation of a governmental burden . . .". e.g. Utah City v. Intermountain Health Care, 709 P. 2d 265 (Utah 1985).

The key to assurance that promise becomes reality in any system which requires provision of a "reasonable volume" of charity care, as required and measured by your proposed §110-24.8.5, is a parallel recordkeeping requirement such as that required by §110-24.8.6. Such basic recordkeeping provisions can help overworked assessors in their annual determination of charitable status by providing a sort of "audit trail" for measuring compliance. The key to fairness in the distribution of charity care lies in your requirements for posted and oral notice to patients, to ensure that consideration for such charity care is dispensed in an even-handed manner. Together, these substantive and procedural requirements in your §§110-24.8 can alleviate or eliminate the ad-hoc, inherently irrational systems documented in my comments of March 11, 1988.

Thank you for the opportunity to comment on these proposed and emergency rules, and for your balanced approach to the difficult issues presented. Please contact me if any of my comments require clarification or amplification.

Sincerely,

John Purbaugh

John Purbaugh
Attorney at Law

JCP:jm

cc: John Montgomery
Bruce Perrone
Sandra Rhodes

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James P. Martin
Program Director

March 11, 1988

Mr. Michael E. Caryl
State Tax Commissioner
State Capitol
Charleston, WV 25305

RE: Proposed Rule on Exemption of Property from Ad Valorem Property Taxes, §23 "Charitable Hospitals".

Dear Commissioner Caryl:

I represent a number of clients who have experienced problems in being considered for free or below-cost medical care by charitable hospitals. In looking into this matter, I have reviewed your proposed rule, filed December 5, 1986, regarding Exemption of Property from Ad Valorem Property Taxes, in which §23 pertains to Charitable Hospitals. Proposed §23 is apparently your response to the decision of the Supreme Court of Appeals in Cook v. Rose, 299 S.E. 2d 3 (W. Va. 1982).

There are three purposes of this letter: (1) inquire as to the current status and target date for final promulgation of rules implementing the mandate of Cook v. Rose; (2) to comment briefly on the proposed rule; and (3) to formally request that you proceed to final promulgation, incorporating certain specific suggested language in the final rule.

I find §23.8 to be the "heart" of your regulations on this topic. Hospitals commenting on these proposed regulations apparently objected to the provisions of this section without first reading Cook v. Rose and the cases cited therein, particularly Adkins v. St. Frances Hospital, 149 W. Va. 705 (1965). The requirement of providing free and below cost services to all who request necessary medical care but are unable to pay for it (§23.8.3, 4 and 5) has been clearly established by this existing caselaw. Hospitals are given latitude to establish reasonable rules and criteria for determining ability to pay (§23.8.3.C); hospital allegations that this regulation would permit abolishment of the Medicaid program (e.g. 1/28/87 comments from Wheeling Hospital, p. 2)

are not based on a careful analysis of §23 as a whole, since such "reasonable rules" could and should define "ability to pay" as including governmental payment programs.

There are three obstacles to assuring that low-income people who need charity care actually obtain it:

(a) Hospitals are not required to inform patients (either orally, in writing, or by posted notices) of the existence of charity care policies or of mechanisms for using charity care policies;

(b) Charitable hospitals are not required to maintain any records of the levels of charity care provided under their policies; and therefore,

(c) No one can determine whether charitable hospitals have provided care at an appropriate level.

I currently represent Sandra Rhodes, of Braxton County, in defense of a collection suit by a charitable hospital. In her sworn answer to the complaint (copy attached) she recites in paragraphs 12-18 her experiences in this regard in the admitting and billing process. It is clear from several exhibits in this case that, under a system without notice or recordkeeping requirements, obtaining free or below cost care is at best an ad-hoc, inherently arbitrary process. Braxton County Memorial ("BCMH"), in a sworn application package, informed the Health Care Cost Review Authority ("HCCRA") that its policy, adopted in 1980, was that "Charity will be defined and determined in accordance with guidelines (adjusted annually) to reflect the ability to pay all or a portion of the balance due." (Exhibit 1, attached). Yet, in response to an inquiry in 1987, BCMH's attorney represented that there is no written policy, and that the charity patient is interviewed by the Administration, who makes a recommendation to the hospital board. (Exhibit 11, attached). Mrs. Rhodes was advised of none of these policies or procedures in any way. When filing their annual audited financial statements as required by W. Va. Code §16-5F-1, BCMH combined uncollectible debts and charity care into a single figure, making any determination of the extent to which they actually provide charity care impossible. (Exhibit 13, attached).

The Court in Cook v. Rose appropriately did not tell you how to exercise your substantive discretion but did require you to "issue specific and clear regulations, guidelines, forms and instructions . . .[and] to assure their continuing enforcement." 299 S.E. 2d at 8. Because of the problems reviewed above, and in order to satisfy basic concepts of due process, I believe that brief provisions should be added to §23 of your regulations, requiring meaningful posted notice, written or oral notification to certain identified persons, and recordkeeping.

Proposed language is as follows:

> § ____. Notice, Procedures and Recordkeeping. Governmental or nonprofit hospitals must establish procedures and maintain records which demonstrate compliance with the provisions of §23 of these regulations. Such hospitals shall plainly post in the emergency and admitting areas a notice, containing a statement of the existence of their obligation to provide free and below cost care, and of the criteria and mechanism for receiving such care. Such hospitals shall provide written notification of the existence, criteria and mechanism for receiving such care, at a minimum, to each person admitted or treated who does not demonstrate payment coverage under governmental programs or private insurance. Such hospitals shall create and maintain records demonstrating that such required criteria and mechanisms are established, that such required policies have been posted and distributed, and which record any and all requests for free or below cost care, the disposition of such request, and the rationale for such disposition. Such records shall be available to the patient or her/his representative on request and shall be maintained at least for so long as the bill, if any, for such services has been paid, written off, or otherwise satisfied without further obligation by the patient.

This language is designed to set minimal standards yet leave great flexibility to the hospital in establishing the levels, criteria and mechanism for the provision of their charity care obligations.

Except for the concerns and proposed language additions just discussed, I view proposed §23 as generally an accurate statement of the basic obligations and standards imposed by existing statutes and caselaw on such hospitals.

The overall problem of medically indigent care needs cannot, and should not, be expected to be solved by your final promulgation of §23, as modified above. However, without expeditious completion of this promulgation, the state will have failed in its duty to address a major piece of the larger puzzle.

Please advise me, in thirty days, of your intentions regarding the completion or final promulgation of such rules, as mandated by Cook v. Rose. I am available at your convenience to discuss any matters relative to this letter.

Sincerely,

John Purbaugh
Attorney at Law

JCP:jm

CAG
ACTION FOR A CHANGE!

WEST VIRGINIANS WITHOUT HEALTH INSURANCE

A Growing Crisis

A Study Of
The Non-Elderly Uninsured
Population in West Virginia

June 1, 1988

West Virginia-Citizen Action Group
1324 Virginia Street, East
Charleston, WV 25301
304/346-5891

Contents

Introduction

This report presents important socioeconomic data on the non-elderly uninsured in the Mountain State -- i.e., those lacking any private or public health insurance coverage.

Category by category, the report details the health insurance status of our state's population, demonstrating that people from all walks of life are at risk of being uninsured, and that particular categories of West Virginians are more likely to lack insurance.

Background Information

Americans are losing health care coverage at an alarming rate. Since 1980, the number of Americans without health insurance increased from thirty million to thirty-seven million, an average increase of one million each year.

This means that one out of six Americans has no private or governmental health insurance of any kind. Furthermore, fifty million Americans have inadequate coverage which would not adequately cover their bills in case of serious illness. In growing numbers, our people are faced with reduced, or no, health insurance coverage.

The drop is due primarily to two factors: (1) reductions in employment-based health insurance coverage and (2) serious cuts in Medicaid. Many employers have stopped offering coverage to family members, or have cut employee coverage completely. This has led to our current situation in which three-fourths of uninsured Americans are workers and their families. If all employers offered health care coverage as a fringe benefit to workers and their families, it is estimated that 27 million of those now without coverage would have health insurance.

In addition, most employers have reduced the value of the coverage they offer to employees. For example, between 1982 and 1984, one-half of all employers increased the premiums and deductibles on employee health insurance. One-third increased the co-insurance or co-payments which indi-

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*/ This study is based primarily on Current Population Survey data supplied by the UCLA School of Public Health. It was compiled for the West Virginia-Citizen Action Group by national Citizen Action, of Washington, D.C.

viduals must pay for each service. Medicaid cuts in eligibility have been so severe that in the mid-1980's, Medicaid covered less than half of Americans living in poverty.

It bears emphasizing that this burgeoning population of uninsured Americans has less access to medical care than those with insurance. According to a 1986 Robert Wood Johnson Foundation study on access to health care, lack of health insurance and the inability to pay out-of-pocket kept thirteen and one-half million people from receiving medical care that year. Moreover, one million people who tried to obtain needed care were turned away.

The survey also found that those without health insurance are one-third more likely to be in fair or poor health than those with insurance. The study also found that despite their being in poorer health, the uninsured received 27% fewer physician services and were hospitalized 19% less frequently than the insured. Additionally, one-fifth of the uninsured with serious symptoms never saw a doctor during the year.

The uninsured also did not receive adequate preventive care. Immunizations for children, blood pressure check-ups for people with hypertension, and prenatal care all occurred less frequently among this group. One reason for this is that county hospitals and community health centers are increasingly less able to serve the enormous number of uninsured Americans. This lack of basic health care is not only a tragedy for the individuals involved, but it also is more expensive in the long-run.

According to the House Select Committee on Children, Youth and Families, every one dollar spent for prenatal care saves $3.38 of future medical costs. Furthermore, the Committee found that every one dollar spent on immunization saves $10 in later medical costs.

In the past, those without health insurance generally could receive "free" care at their local hospital or clinic. However, this is no longer true. The growing "for-profit" health care industry, coupled with federal cutbacks in the funding for community health care centers (and other federal health care programs), has resulted in far less access to "free care."

Generally, hospitals pass along the costs of whatever "free care" they do offer in the form of higher rates for other services. This results in higher hospital bills and higher insurance premiums, which are paid by individuals and employers (who provide health insurance benefits).

Moreover, because the uninsured typically receive care from one of the most expensive segments of the health care

system -- i.e., hospital emergency rooms -- and have little access to early preventive care, the public pays a very high rate for this "free care."

If all employers provided a minimum level of health benefits to employees and their families, much of this unfair and unwise cost-shifting would be alleviated.

Clearly, those without health insurance face difficulties of tragic proportions. At the same time, the dimensions of this statewide and national crisis continue to grow.

This study offers an analysis of the specific categories of people most at risk of being uninsured. It is intended to assist public officials in crafting appropriate solutions to this crisis.

Findings

1. Approximately 300,000 West Virginians Lack Health Insurance.

An estimated 298,700 West Virginians, or 18.7% of the state's non-elderly population, are without any health insurance coverage. See Appendix A, "Uninsured People Under 65 Years of Age By Selected Characteristics, West Virginia and U.S., 1985."

This compares to a national rate of 17.6% of the non-elderly population. On the basis of this new information, West Virginia ranks in the bottom third of all states in the rate of health insurance.

2. Most Uninsured West Virginians Are Employed.

Slightly more than one-half of uninsured West Virginians work for a living, but receive no health insurance through their place of employment. See Appendix B, "Insurance Status of Full-Time, Part-Time and Part-Year Workers, West Virginia, 1985."

About 12% are employed full-time year round, while 38% work part-time or full-time part of the year. When the children and spouses of uninsured workers are included in the total, it is likely that the percentage of all uninsured represented by workers and their families is between 66% and 75% in West Virginia.

The Uninsured By Employment Status
(18 years and older)

Employment Status	# Uninsured (thousands)	% Category Uninsured
Full-time/full-year	25.1	7.0
Full-time/part-year	36.2	19.7
Part-time	41.0	29.5
Unemployed	100.0	**

3. Workers In Certain Industries Are Much More Likely To Be Uninsured.

Employees working for eating/drinking establishments are least likely to receive on-the-job health benefits in West Virginia, with a rate of 43.8% uninsured. Other industrial categories in the top five are entertainment/recreation (42.5%), repair services (40.6%), food manufacturing (39.1%) and business services (34.3%). See Appendix C, "Uninsured Persons Under 65 By Industry, West Virginia, 1985."

Top Five Industries
With The Highest Rate Of Uninsured Employees

Industry	% of Uninsured
Eating/Drinking Establishments	43.8
Entertainment/Recreation	42.5
Repair Services	40.6
Manufacturing/Food	39.1
Business Services	34.3

These figures compare with heavily unionized industries such as mining and petrochemical manufacturing, which have uninsured rates of 1.7% and 3.9%, respectively.

From the standpoint of the total number of employees, eating/drinking establishments again leads the state with 18,530 uninsured workers. Rounding out the top five are retail services (15,570), construction (13,700), social services/public aid (9,350) and repair services (6,450).

Top Five Industries
With The Most Uninsured Employees

Industry	# of Uninsured
Eating/Drinking Establishments	18,530
Retail Services	15,570
Construction	13,700
Social Services/Public Aid	9,350
Repair Services	6,450

4. Children Represent About One-Third Of The Uninsured.

Demographic analysis reveals that 96,300 uninsured, or 32.2% of the total, are children under the age of 18 years of age. Uninsured children in West Virginia represent 19.8% of all children under the age of 18. This is slightly higher than the national figure of 19.6%. See Appendix A, infra.

Interestingly, if the next age bracket -- i.e., 18 to 29 years of age -- is added to this total, the result demonstrates that 163,499, or 55%, of the uninsured are less than 30 years old.

The Uninsured By Age

Age	# Uninsured (thousands)	% Category Uninsured
Children		
0 to 5 years	25.4	17.4
6 to 17 years	70.8	20.9
Subtotal	96.3	19.8
Adults		
18 to 29 years	67.2	22.7
30 to 44 years	70.3	17.1
45 to 54 years	28.4	15.9
55 to 64 years	36.5	15.9
Subtotal	202.4	18.2

5. Most Uninsured Have Modest Incomes.

The largest number of uninsured West Virginians live in families that earn at or three times above the federal poverty level. These families -- representing 152,600 individuals, or 51% of the uninsured -- have modest incomes. About half of this number, approximately 75,000 West Virginians, are traditionally referred to as the "working poor." See Appendix A, infra.

Nearly 40% of the uninsured are living in families with incomes lower than the federal poverty level. This incredible figure represents about one-third of all families living below the federal poverty level. It is the direct result of severe Medicaid cuts in eligibility during the past eight years.

The Uninsured By Income Level

Income Level	# Uninsured (thousands)	% Category Uninsured
Below poverty level	115.1	30.2
1.0 to 1.49 x poverty	77.8	33.4
1.5 to 2.99 x poverty	74.8	14.4
3.0 x poverty or more	31.0	6.6

It is important to note that this data reveals that even middle income West Virginians are not immune from the problem: 31,000 uninsured individuals have family incomes greater than three times the federal poverty level. In 1985, this included those with incomes of approximately $33,000 (for a family of four), and about $17,000 (for an individual).

Recommendations

While there are a number of long-term goals that must be pursued -- including the enactment of a comprehensive, national health care plan -- there are several intermediate steps that require immediate attention at both the state and federal levels.

For instance, the West Virginia Legislature -- during the current special session -- should adopt the proposed

"Small Business Health Insurance Demonstration Project." This modest effort, embodied in H.B. 4220, was originally proposed by the Legislature's "Uncompensated Care Task Force." It would establish a health insurance pool in West Virginia and, as a result, make available a lower cost source of health insurance for small businesses.

Beyond this limited measure, legislators should also begin carefully examining the feasibility of adopting a comprehensive state health insurance plan, patterned after the Massachusetts Health Security Act of 1988 passed earlier this year. See Appendix D, "Background Information Concerning The Massachusetts Health Security Act of 1988."

At the federal level, Congress should enact S.1265, the "Minimum Health Benefits for All Workers Act." Among other things, this legislation would ensure that all persons working over 17.5 hours per week are covered by a basic health insurance package. The cost of the insurance would be covered by existing employers, but to make it more affordable large regional insurance pools would be established (with resulting savings of about 30%). If this legislation is adopted, approximately 26 million of the estimated 37 million uninsured Americans would be covered by a minimum plan. See Appendix E, "Background Information Concerning The Minimum Health Benefits For All Workers Act."

Conclusion

It is absolutely essential that our state and nation pursue public policies designed to ensure adequate health care for all citizens. As Dr. Arthur Fleming, former Secretary of Health, Education and Welfare under President Eisenhower, states:

> Our health care system is a national disgrace. It is indefensible that we are the only industrialized country in the world, except for South Africa, without a national healthcare program.

In West Virginia, this national "disgrace" is very close to a state tragedy. But importantly, the health care problems we are facing today were created by people. As such, they can be solved by people.

First, however, the "people" -- especially our elected and appointed public officials -- must be armed with accurate and reliable information concerning the scope of the health care crisis. The purpose of this study is to provide such data about one key aspect of the overall problem: the uninsured in West Virginia.

APPENDIX A

Uninsured People Under 65 Years Of Age
By Selected Characteristics

West Virginia and United States

1985

UNINSURED PEOPLE UNDER 65 YEARS OF AGE BY SELECTED CHARACTERISTICS, WEST VIRGINIA AND U.S., 1985

	PERCENT	NUMBER (thousands)	U.S. PERCENT
TOTAL	18.7%	298.7	17.6%
AGE			
Children			
0-5 Years	17.4%	25.4	19.5%
6-17 Years	20.9%	70.8	19.6%
0-17 Years	19.8%	96.3	19.6%
Adults			
18-29 Years	22.7%	67.2	24.5%
30-44 Years	17.1%	70.3	12.7%
45-54 Years	15.9%	28.4	12.6%
55-64 Years	15.9%	36.5	13.9%
18-64 Years	18.2%	202.4	16.8%
FAMILY INCOME			
Adults			
Less Than Poverty	33.1%	75.8	41.3%
1.0-1.49 X Poverty	31.8%	43.1	34.2%
1.50-2.99 X Poverty	15.2%	55.7	17.9%
3.0 X Poverty or more	7.2%	27.8	7.9%
Children			
Less Than Poverty	25.8%	39.3	35.0%
1.0-1.49 X Poverty	35.6%	34.7	31.8%
1.50 -2.99 X Poverty	12.5%	19.1	16.7%
3.0 X Poverty or more	3.9%	3.2	7.8%
ETHNICITY			
Adults			
White	18.1%	196.3	14.2%
Black	29.9%	5.2	23.2%
Hispanic	0.0%	0.0	32.2%
Other	9.0%	0.9	21.6%
Children			
White	20.0%	92.9	16.5%
Black	29.9%	3.3	25.0%
Hispanic	0.0%	0.0	31.7%
Other	0.0%	0.0	21.8%
CHILDREN IN TYPE FAMILY			
Married Couple	14.1%	56.1	14.7%
Single Parent	46.5%	40.2	34.0%

UNINSURED PERSONS UNDER 65 YEARS OF AGE BY SELECTED CHARACTERISTICS, WEST VIRGINIA AND THE U.S., 1985 (Continued)

	WEST VIRGINIA		U.S.
	Percent	Number (Thousands)	Percent
Sex			
Males			
0-5 years	14.0%	10.3	20.1%
6-17 years	19.9%	34.3	19.3%
18-29 years	28.0%	38.3	27.0%
30-44 years	16.1%	33.9	13.8%
45-54 years	13.4%	10.1	11.8%
55-64 years	11.3%	11.9	11.9%
Females			
0-5 years	20.9%	15.2	18.9%
6-17 years	21.9%	36.5	19.9%
18-29 years	18.1%	28.8	22.0%
30-44 years	18.2%	36.3	11.6%
45-54 years	17.7%	18.3	13.4%
55-64 years	20.0%	24.7	15.6%

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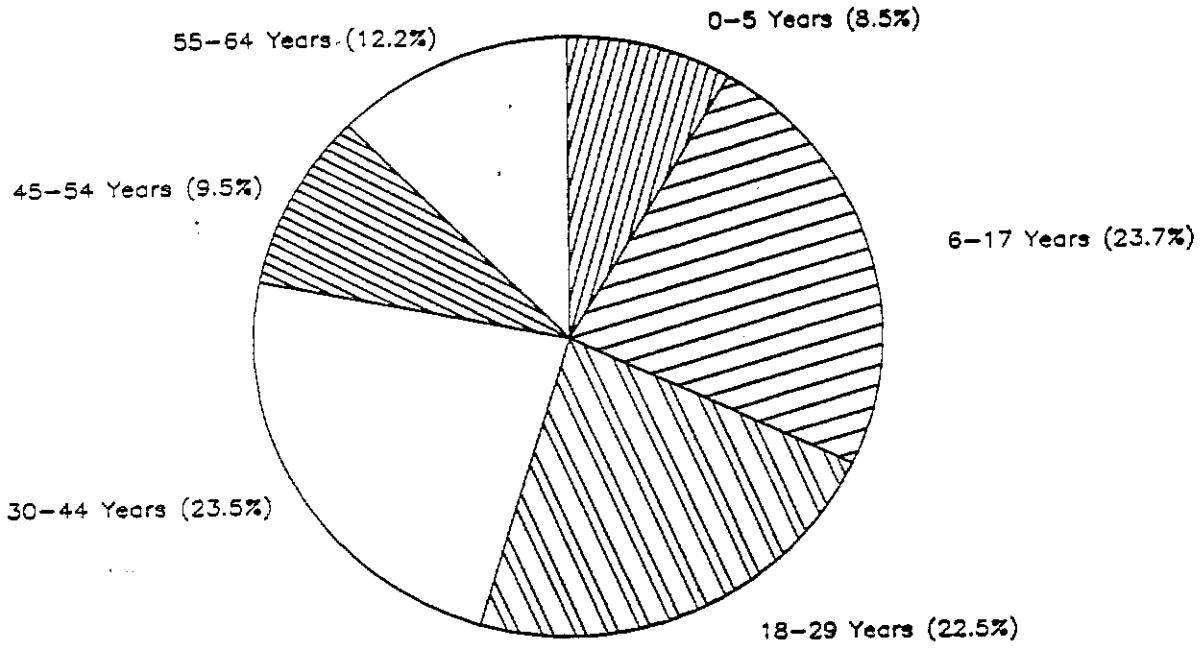
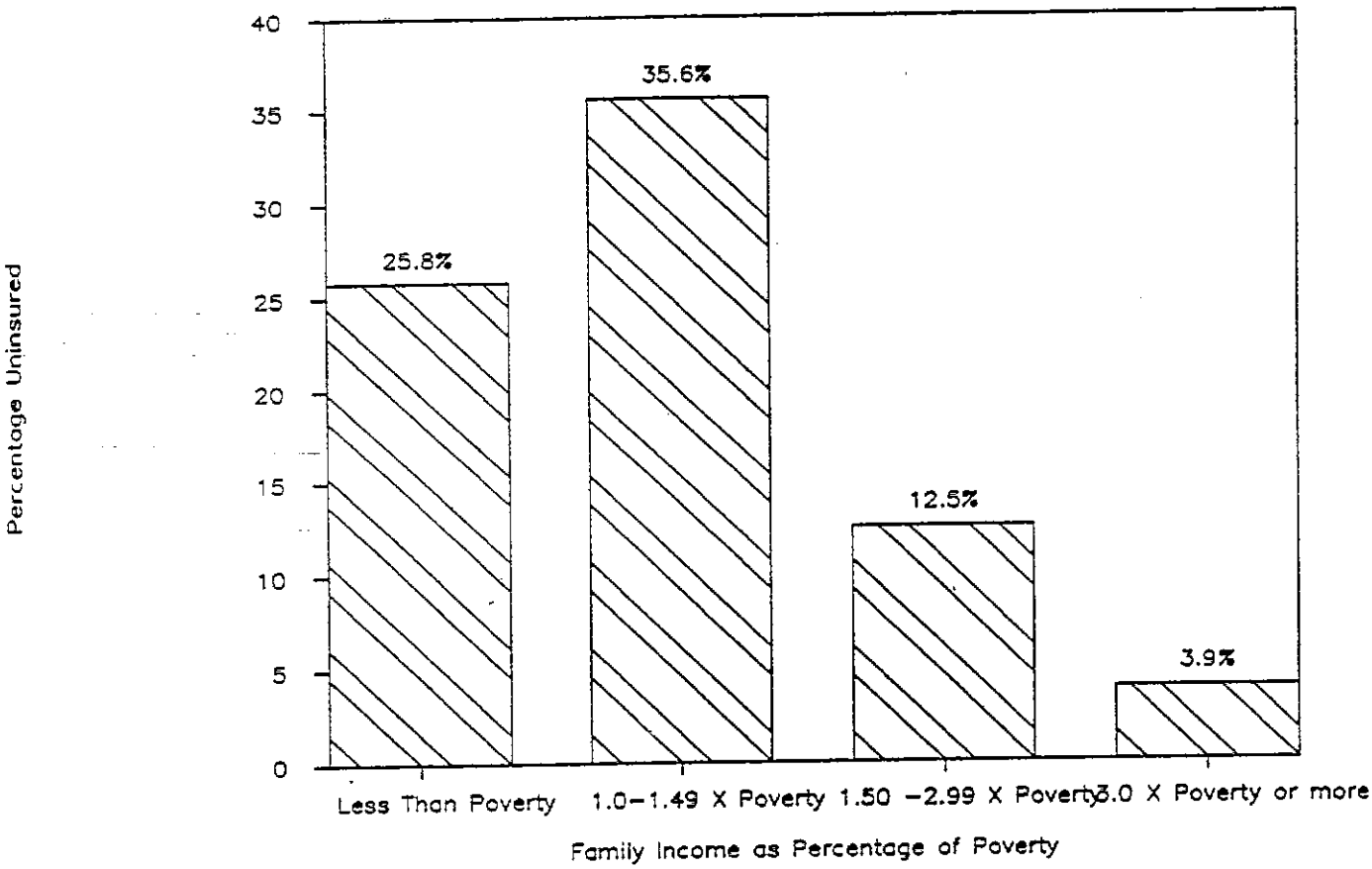
Age Distribution of the Uninsured
West Virginia, 1985



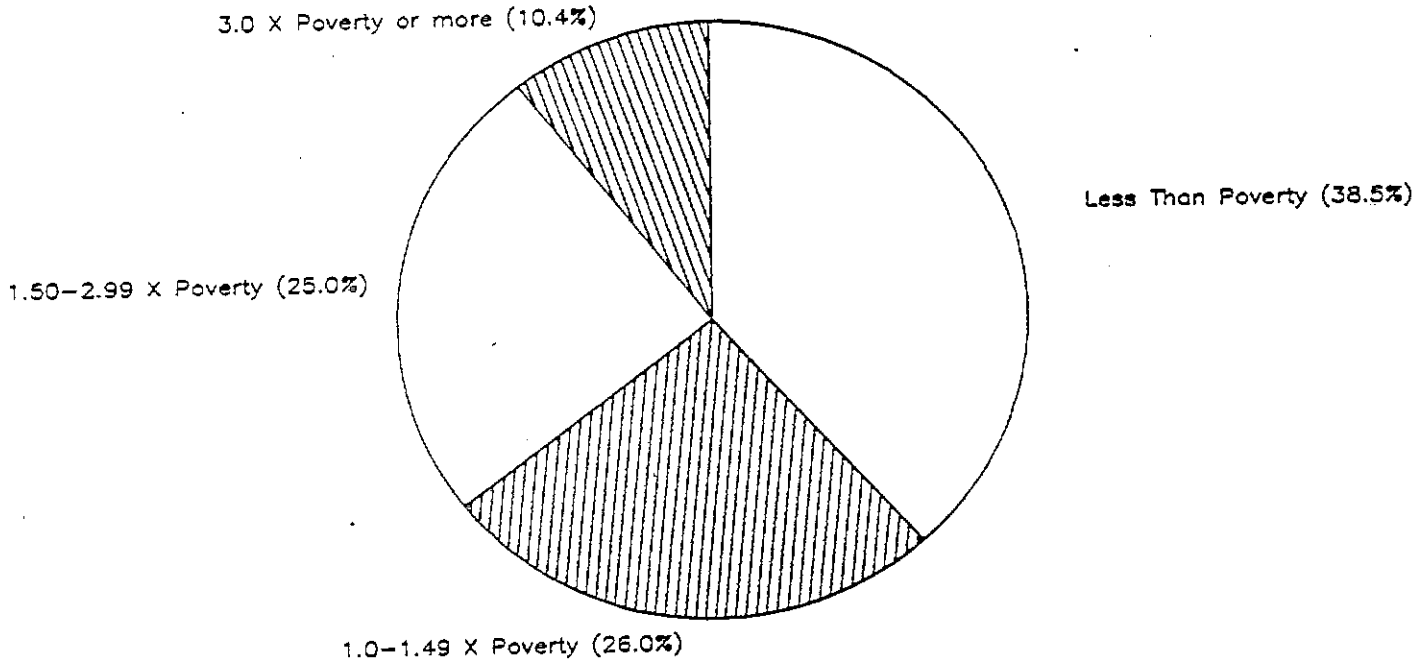
Source: Current Population Survey, March 1986

Percentage of Children Uninsured by Family Income
West Virginia, 1985



Source: Current Population Survey, March 1986

Percent Uninsured by Family Income
West Virginia, 1985



Source: Current Population Survey, March 1986

APPENDIX B

Insurance Status Of Full-Time,
Part-Time And Part-Year Workers

West Virginia

1985

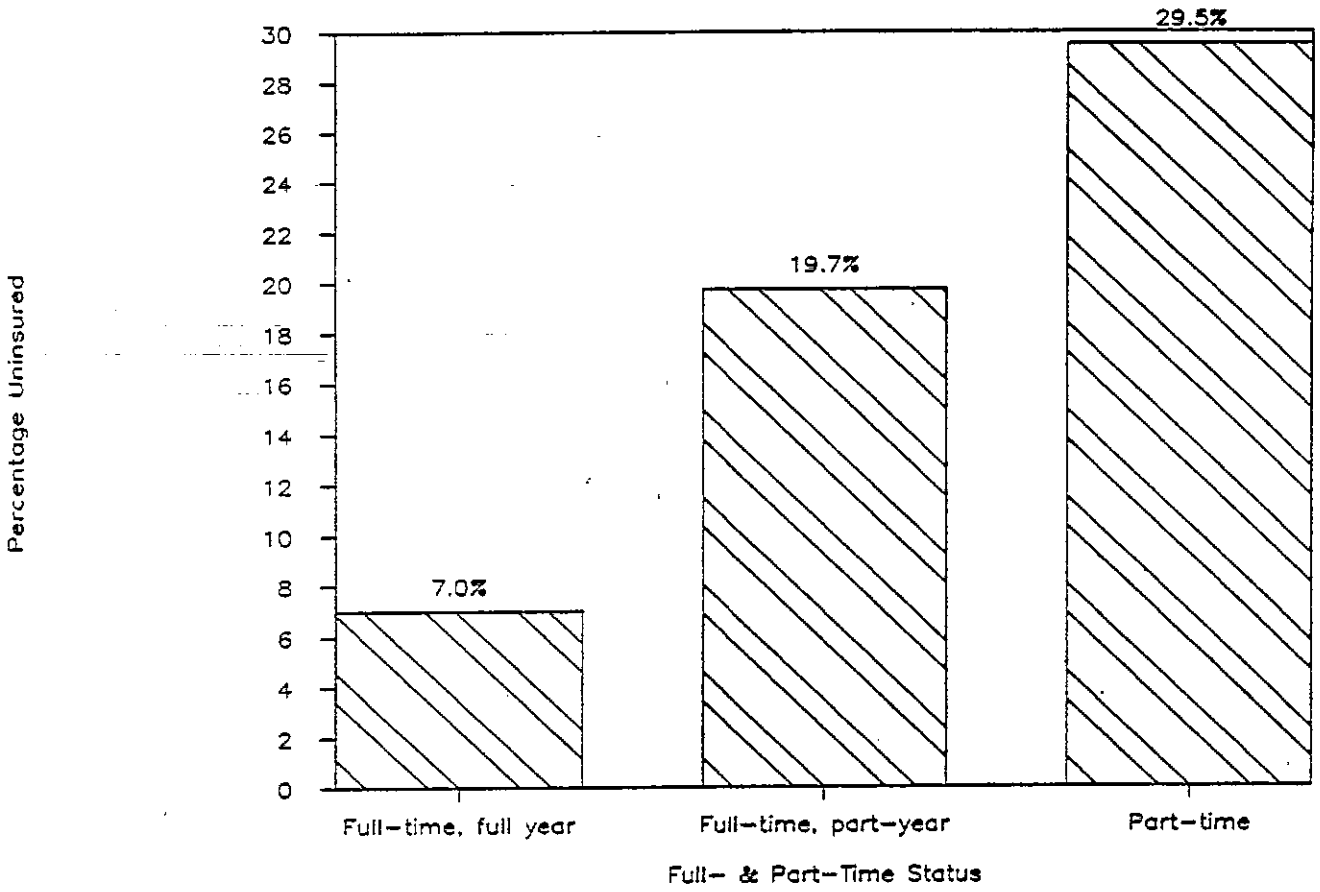
INSURANCE STATUS OF FULL-TIME, PART-TIME AND PART-YEAR WORKERS WEST VIRGINIA, 1985

		Percent Insured			
	Percent Uninsured	As Fringe Benefit	By Other's Job-Related Insurance	By Other Coverage	Total Number of Workers (000's)
Time Worked (Employees)					
Full-time, full year	7.0%	77.6%	10.7%	4.6%	358.7
Full-time, part-year	19.7%	54.2%	14.9%	11.3%	183.8
Part-time	29.5%	13.4%	32.9%	24.2%	139.1

INSURANCE STATUS OF WORKERS BY EMPLOYMENT TYPE: PRIVATE/GOVERNMENT/SELF WEST VIRGINIA, 1985

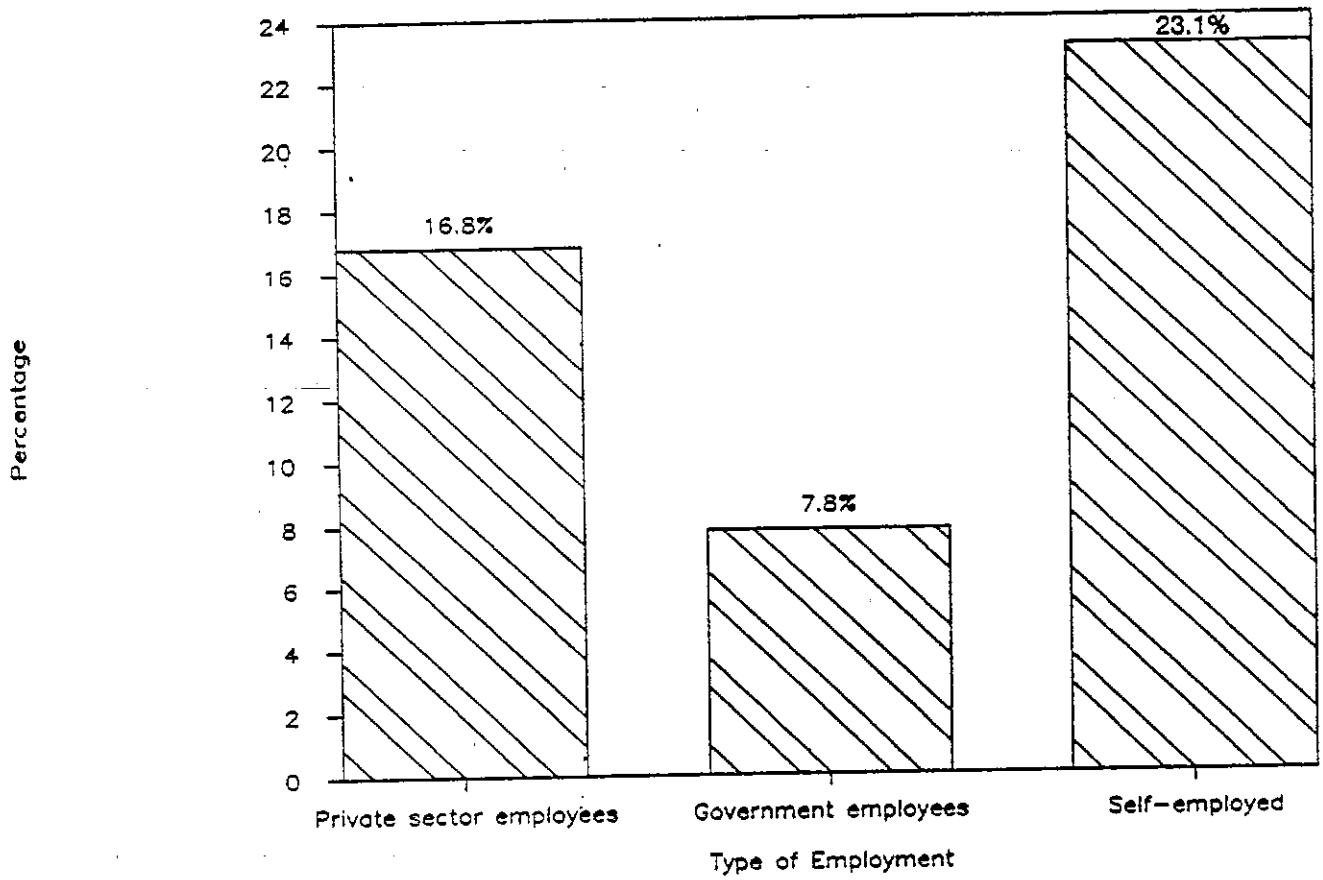
Type of Worker	Percent Uninsured	Number Uninsured (000's)	Total Number of Workers (000's)
Private sector employees	16.8%	92	545.8
Government employees	7.8%	11	135.8
Self-employed	23.1%	10	42.0

Percentage of Employed Persons Who Are Uninsured
West Virginia, 1985



Source: Current Population Survey, March 1993

Percentage of Uninsured by Type of Employment
West Virginia, 1985



Source: Current Population Survey, March 1988

Appendix C

Uninsured Persons Under 65
By Industry

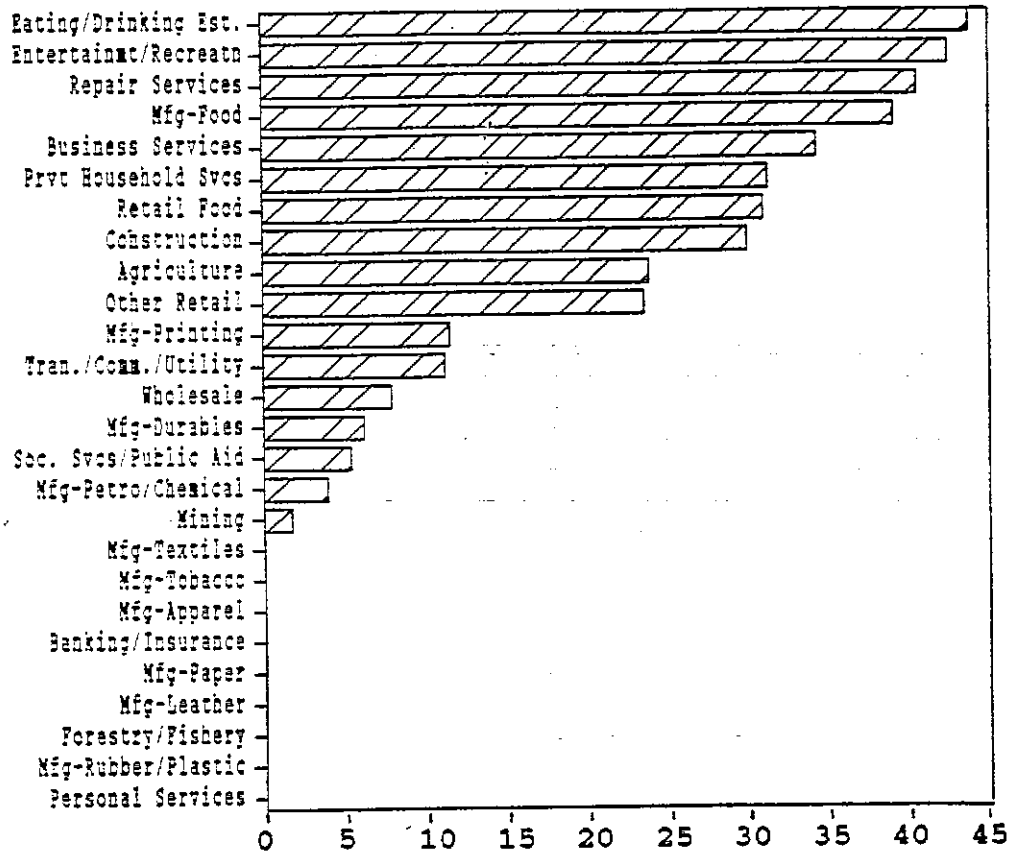
West Virginia

1985

UNINSURED PERSONS UNDER 65 BY INDUSTRY
WEST VIRGINIA, 1985

INDUSTRY	PERCENT UNINSURED	******PERCENT INSURED ****** As Fringe Benefit	By Other's Job-Related Insurance	By Other Coverage	TOTAL NUMBER OF EMPLOYEES (000's)
Agriculture	23.9%	25.6%	25.7%	24.8%	8.3
Mining	1.7%	87.3%	5.9%	5.1%	56.8
Construction	30.0%	49.0%	13.4%	7.6%	45.7
Manufacturing -Durables	6.2%	87.6%	2.0%	4.1%	48.7
Manufacturing -Food	39.1%	30.6%	30.3%	0.0%	7.4
Manufacturing -Tobacco	0.0%	100.0%	0.0%	0.0%	2.0
Manufacturing -Textiles	0.0%	82.4%	0.0%	17.6%	5.4
Manufacturing -Apparel	0.0%	73.3%	26.7%	0.0%	4.1
Manufacturing -Paper	0.0%	100.0%	0.0%	0.0%	3.3
Manufacturing -Printing	11.5%	75.0%	13.4%	0.0%	7.6
Manufacturing -Petroleum/Chemical	3.9%	84.1%	4.3%	7.7%	23.3
Manufacturing -Rubber/Plastic	0.0%	100.0%	0.0%	0.0%	5.3
Manufacturing -Leather	0.0%	0.0%	100.0%	0.0%	1.2
Transportation/ Communication/Utility	11.2%	78.5%	8.2%	2.1%	50.8
Wholesale	7.9%	80.5%	11.6%	0.0%	25.4
Banking/Insurance	0.0%	76.9%	10.5%	12.6%	18.3
Private Household Services	31.3%	10.9%	35.4%	22.4%	19.4
Business Services	34.3%	53.9%	11.8%	0.0%	10.4
Repair Services	40.6%	33.2%	20.0%	6.2%	15.9
Entertainment/ Recreation	42.5%	9.1%	19.2%	29.2%	10.9
Social Services/ Public Aid	5.4%	62.7%	19.9%	12.0%	173.2
Forestry/Fishery	0.0%	0.0%	0.0%	100.0%	1.2
Other Retail	23.6%	39.2%	28.8%	8.5%	66.0
Retail Food	31.0%	32.1%	20.5%	16.4%	20.2
Eating/Drinking Establishments	43.8%	9.7%	18.8%	27.7%	42.3
Personal Services	0.0%	11.7%	50.1%	38.2%	8.5

Percentage of Uninsured Employees by Industry
West Virginia, 1985



Source: Current Population Survey, March 1986

Appendix D

Background Information Concerning The
Massachusetts Health Security Act of 1988

THE MASSACHUSETTS HEALTH SECURITY ACT OF 1988

FACT SHEET #1: Universal Health Insurance Provisions

The Health Security Act of 1988 gives Massachusetts residents the nation's first program to assure basic health security through universally available insurance. There are 600,000 uninsured Massachusetts residents--1 in 10 of our fellow citizens--who will finally be able to get affordable, quality health insurance.

The Act initially encourages and later requires employers to contribute to health insurance for their employees since two-thirds of the uninsured are working people and their dependents. Persons who are not covered by employers will be able to obtain health insurance through a number of new programs and through a new state agency at state-subsidized rates.

All Massachusetts residents will have health insurance available to them by 1992, according to the following schedule:

- Disabled adults who wish to work and disabled children of working parents will have primary and supplemental health insurance, with benefits up to Medicaid levels, available to them by the end of 1988;
- Child support and alimony laws have been strengthened to improve health insurance availability for dependent children and former spouses;
- Firms with six or fewer employees will be able to join a new small business group insurance purchasing pool in 1989;
- Phase-in initiatives offering health insurance and managed care to uninsured persons will be started in 1989;
- Beginning September, 1989, all college and university students studying at least three-quarter time will have health insurance coverage, offered through their schools;
- Beginning in 1990, a two-year tax credit will be offered to businesses with 50 or fewer employees which have not offered health insurance in the previous 3 years; the credit will equal 20% in year 1 and 10% in year 2;
- In 1990, persons receiving unemployment insurance will be eligible for employer-subsidized health insurance;
- In 1991, persons receiving General Relief from the state will be enrolled in prepaid health insurance plans;
- Beginning in January, 1992, most employers will be required to contribute to a state-administered medical security trust fund for the benefit of their full-time, permanent employees; employers who already contribute to their employees' health insurance will be allowed a deduction equal to these expenditures;

- By mid-1992, all Massachusetts residents who do not have health insurance through their employers will be able to purchase affordable health insurance through the new Department of Medical Security; the Department will offer managed care plans and will set premiums according to a sliding fee scale.

Employer mandates under the new law:

- The Act requires employers to contribute to the cost of health insurance:

  -- beginning in 1990, employers will contribute an amount equal to .12% of the first $14,000 in yearly wages per employee (maximum=$16.80) to help finance health insurance for workers receiving unemployment insurance;
  -- beginning in 1992, employers will contribute an amount equal to 12% of the first $14,000 in yearly wages per employee (maximum=$1,680) to help finance health insurance for their workers.

- The employer mandates apply to all Massachusetts employers except:

  -- employers with five or fewer employees;
  -- self-employed persons;
  -- new businesses in their first year of operation (they are subject to one-third of each contribution in their second year; two-thirds in their third year and the full rate thereafter).

- Employer contributions are required for the following employees:

  -- full-time employees working at least 30 hours/week after 90 days;
  -- part-time employees working at least 20 hours/week after 180 days or after 90 days if they are heads of households.

- Employer contributions are not required for employees who are:

  -- hired for less than five months, such as temporary or seasonal workers; or
  -- have health insurance through another source, such as a spouse or parent.

- New Hardship Fund for small employers:

  -- employers with 50 or fewer employees who are severely impacted by the 12% contribution will be eligible for financial assistance;

  -- the fund will pay contribution costs exceeding 5% of an employer's gross revenue.

Los Angeles Times

) Sunday | Friday, April 22, 1988 | CC/ 140 Pages Copyrig

)ukakis Signs Universal Health-Care Bill

Massachusetts Is First State to Provide Basic Insurance for All

By LEE MAY, *Times Staff Writer*

BOSTON—In a festive outdoor eremony, Massachusetts Gov. Mi-ael S. Dukakis, leading contend-for the Democratic presidential nination, Thursday signed into / the nation's first legislation viding basic health insurance all residents of a state.

"We have good reason to rejoice ay," Dukakis told a lunchtime wd of several hundred people imed onto the Statehouse steps, we once again become the ion's laboratory, the nation's hfinder—blazing a trail that ds to affordable, quality health e for every man, woman and ld in this commonwealth."

The law which will be phased o full effect by 1992 is aimed at 600,000 uninsured people ong the 6 million residents of the te. But in this election year, its pact extends well beyond the te borders, becoming a yardstick measuring a potential Dukakis sidency.

"What we do here today can and st be done all over the United tes of America," Dukakis told porters Thursday.

Backers of the measure hail it as nodel for national health insur-ce, while opponents warn that it ld wreak financial havoc.

Beginning in 1992, all companies t employ six or more people will required to provide health in-ance for those employees. Those t do not will have to pay ually about $1,680 per employ-into a state-administered insur-e fund, from which uninsured ple will be able to buy insurance a sliding scale, paying 25% to % of the insurance cost.

The state-sponsored fund will be n to the unemployed as well. se too poor to pay the insurance mium would be eligible for state dicaid coverage.

Dukakis said the legislation will t Massachusetts $622 million r the next four years. However, lysts for the state House Ways Means Committee say the cost range from $924 million to $1.4 on. Part of the state's expense les from the fact that, until everyone is guaranteed insurance in 1992, the state must pay into an "uncompensated care pool," which pays hospitals when they cannot collect for care provided to indigent people.

Cost Containment Planned

As a trade-off for this new expense, hospital cost containment measures will be initiated, limiting rate increases, setting caps on the amount of money funneled to hospitals from the uncompensated care pool, and pressuring unneeded institutions to close or convert to other community uses.

"A certain compassion" and "a deep commitment to quality of life" became evident in Dukakis as he steered the bill through the Massachusetts Legislature, said Karen Davis, chairman of the department of health policy and management at Johns Hopkins University's School of Public Health and an assistant secretary of health and human services in the Jimmy Carter Administration.

"He showed me that he is single-minded in a certain sense," said Robert Restuccia of Health Care for All, an 80-group consumer coalition. "He was hard to convince, but once he became convinced he was a strong advocate."

Dr. William M. McDermott, executive director of the Massachusetts Medical Society, praised the new law, saying the organization "shares the social conscience" that the measure demonstrates.

However, state Rep. John H. Flood, Democratic chairman of the Legislature's House Committee on Taxation, accused Dukakis of playing "good-time politics" here to look good in the Democratic primaries. "If he approaches public policy in Washington [as President] the way he approached [the state bill] you're looking at major taxes."

Dukakis and his aides "fully intend to be across the Potomac when this [state deficit stemming from the program] hits the fan," he said.

"Here's the guy who's touting small business," he said of Dukakis, "but here's a bill that will devastate small business."

Richard Mastrangelo, vice president of Associated Industries of Massachusetts, said the new legislation "sends a negative signal to corporate investors about investment in Massachusetts" because it amounts to "another cost of doing business" in the state.

Executives of small firms have been busy clicking their calculators, trying to figure how much the law will cost them.

Garson Fields, president of Berkshire Electric Cable Co. in Leeds, Mass., foresees a "dramatically increased cost in labor" at his 100-employee firm.

To illustrate his point, he figured that at $1,680 a year, an uninsured part-time employee would cost him an extra $32.30 a week. "That means we can't afford to have less sophisticated jobs done by part-time people anymore," Fields said. "We happen to be in a big competitive marketplace, and if I'm bidding against someone from out of state who isn't struggling with this, I can't compete with him."

But proponents of national health insurance legislation, as well as similar state bills, have taken heart from the enactment of the Massachusetts plan.

According to Robert M. Brandon of the Washington office of Citizen Action, a consumer lobbying organization, a dozen other states are considering some form of universal health insurance.

In California a private health-care coalition is advocating a plan called "Baby-Cal," which would cover 60,000 pregnant women and 500,000 children under age 5 currently without insurance.

Of state laws already on the books, only Hawaii's comes close to the Massachusetts legislation. The Hawaii law requires employers t insure workers but does not cove unemployed people.

National health-care legislatio sponsored by Sen. Edward M. Ken nedy (D-Mass.) and Rep. Henry A Waxman (D-Los Angeles), nov awaiting a floor vote, would cove about 22 million of the estimated 4 million uninsured working Ameri cans. The national legislation ex empts businesses with 10 or fewe employees, and workers would pa 20% of the cost.

At Dukakis' campaign headquar ters here, Christopher L. Georges an aide specializing in health is sues, said that while the campaig will "take the principles from th bill and go on to the rest of th country," Dukakis realizes that "i can't be done overnight."

The strategy, Georges said, wil be to use the current bill befor Congress as "a first step," and the seeking additional legislation t extend health insurance to non working people as well.

Davis of Johns Hopkins said President Dukakis also would have timing on his side. "There is grow ing evidence of a consensus that [40 million uninsured Americans] ar an embarrassment to this country,"

Appendix E

Background Information Concerning
The Minimum Health Benefits For All Workers Act

Kennedy-Waxman
S.1265 And H.R.2508

CITIZENACTION

MINIMUM ESSENTIAL HEALTH BENEFITS FOR ALL WORKERS ACT

FACT SHEET

The Problem:

37 million Americans -- 75% of whom are workers and their families -- have no health insurance of any kind. Not only is the total number of the uninsured rising -- up by one million persons a year since 1980 -- the number of uninsured workers is also on the increase. An additional 53 million persons have inadequate insurance, leaving them vulnerable to the catastrophic consequences of high medical costs.

Between 1982 and 1984, for example, 5.5 million jobs were added to the workplace, but the number of workers with employer coverage fell by 1 million. The causes in the drop of employer-provided coverage include a shift from manufacturing to retail and service jobs, increases in part-time employment, the high number of newly-created low-wage jobs, and employer decisions to cut back or eliminate coverage in order to cut costs.

The Legislation:

On February 17, 1988, the Senate Labor Committee voted out a substitute version of S. 1265, the Minimum Essential Health Benefits for All Workers Act of 1987. In the House, H.R. 2508 will be considered by the House Education and Labor Committee as well as the Energy and Commerce Committee.

The bill:

** Requires that employers provide a basic package of health care benefits to all employees working more than 17.5 hours/week and their dependents. The package includes hospital and physician care, diagnostic tests, pre-natal care, well-baby care, and limited mental health care, as well as a catastrophic protection limiting all out-of-pocket family costs for covered services to $3,000/year.

** Prohibits insurance exclusions on the basis of health status or pre-existing conditions.

** Limits deductibles to $250 for an individual and $500 for a family, except for pre-natal and well-baby care, for which there would be no deductibles. Co-payments are limited to 20%.

** Requires that employers pay at least 80% of the premium; 100% for low-wage workers.

** Establishes 6-8 regional insurance pools to lower insurance prices for small businesses by cutting administrative costs and utilizing large group rating practices.

** Protects newly-created small businesses by requiring that they offer only lower-cost catastrophic coverage to employees.

** Provides equity to small businesses by giving them the same 100% tax deduction for health insurance premiums presently enjoyed by large corporations.

** Protects businesses of 5 employees or less by phasing in requirements for full coverage over six to seven years.

The Benefits of S. 1265, H.R. 2508:

Protects the Uninsured:

** Covers 20 million full and part-time workers
** Covers 7.4 million uninsured children, and 300,000 disabled children
** Covers 11,600 uninsured high-risk infants

Protects the Underinsured:

** Gives protection to 53 million insured workers currently without limits on out-of-pocket expenses
** Protects 1.9 million uninsured working families who spend over $3,000 on out-of-pocket costs
** Limits employee premium and cost-sharing costs
** Provides pre-natal and well-baby care without deductibles or co-payments
** Saves 10 million persons with individual policies $3.5 billion through access to group rates

Protects Those with Medical Conditions:

** Prohibits discrimination on the basis of medical conditions
** Allows 7 million currently insured workers with pre-existing medical conditions to change jobs without losing coverage because of pre-existing condition exclusions

Protects Companies Who Already Insure:

** Saves small businesses $1.5 billion through lower administrative costs
** Saves $2.3 billion in managed care options (ie. HMO's)
** Reduces premium and tax costs paid to cover uninsured workers, saving $4.8 billion and enhancing competitiveness

Protects Companies Who Can't Afford Insurance:

** Makes insurance affordable for two-thirds of small businesses who cite high cost as an obstacle
** Reduces insurance costs by 15% through creation of regional, large-group plans and an additional 15% for businesses which choose the managed-care option
** Provides equity to small businesses through a 100% deduction for premium costs