John D. Rockefeller IV
Governor

chairperson
Sally K. Richardson
members
Larry Fizer
William L. Gilligan

Health Care Cost Review Authority

State Capitol Building
Charleston, West Virginia 25305

June 22, 1983

Emergency

The Honorable A. James Manchin
Secretary of State
State of West Virginia
Capital Complex
Charleston, West Virginia 25305

Dear Mr. Manchin:

Subject: Emergency filing of Legislative Rules for the Limitation on Hospital Gross Patient Revenue

The emergency under Code §29A-3-15(e) for the promulgation of these rules is the necessity to prevent substantial harm to the public interest. Although the enforcement of these rules is enjoined by a temporary injunction [United Hospital Center v. Rockefeller, No. 83-84-C (N.D. W.Va. May 22, 1983)], we are pursuing the case and hope to have the injunction lifted. In the meantime, the hospitals do not know how the Authority will interpret and apply the limitation on hospitals' gross patient revenue in Code §16-29A-4 if the injunction is lifted. Since if the injunction is lifted hospitals may be liable for excess revenues received during the enjoined period, hospitals that desire to be safe need to know what the allowed gross patient revenue will be for their facility so that, if necessary, they can restrict their revenues over a long enough period of time to prevent an immediate reduction of services or a penalty. In addition, due to the uncertainty resulting from a lack of rules indicating the Authority's approach to the gross patient revenue limitation, some hospitals may be precluded from refinancing their bonded indebtedness at a lower rate of interest than they were able to obtain when their bonds were sold within the last two years. Thus, such hospitals' charges to patients may be higher than they would be if those hospitals could refinance their bonds.

Code §16-29A-1 provides that the purpose of the Health Care Cost Review Authority Law "is to protect the health and well-being of the citizens of this state by guarding against unreasonable loss of economic resources as well as to ensure the continuation of appropriate acute care hospital services."

Sincerely,

Sally K. Richardson, Chairperson

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE June 22, 1983
Administrative Law Division

SKR/gc

STATEMENT OF ECONOMIC IMPACT OF PROPOSED RULES OR REGULATIONS

Agency Health Care Cost Review Authority

Rule No. 16-29B, Series I (1983): Emergency

Subject Legislative Rules for the Limitation on Hospital Gross Patient Revenue

1. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None at present, If the injunction preventing the enforcement of the rules is lifted, then applications for reviews can be expected from most hospitals. During, in the 1984-85 fiscal year, a hearing examiner and clerical person would be necessary part-time. Since rules are temporary, little or no impact would be felt thereafter.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

Required reporting by hospitals will require minimal expense since the data for the reports are already collected.

Permitted applications for adjustments to the gross patient revenue limitation for Certificate of Need approvals or exemptions could involve considerable expense, particularly if appeals are taken.

C. Economic Impact on Citizens/Public at Large.

The rules will result in a savings to the public if the revenue of hospitals if restrained.

Date _____ Agency _____

Signature of Agency Head

Leg C Richardson

Signature of Authorized Representative

_____

FISCAL NOTE FOR PROPOSED RULES

Rule No. 16-29B, Series I (1983): Emergency

Subject Legislative Rules for the Limitation on Hospital Gross Patient Revenue

Type of Rule: [x] Legislative [ ] Interpretive [ ] Procedural

Agency Health Care Cost Review Authority Address 1800 Washington Street, East Charleston, W. Va. 25305

Authorized Representative _____ Phone 348-0530

1. Effect of Proposed Rule	ANNUAL Increase	ANNUAL Decrease	FISCAL YEAR Current 83	FISCAL YEAR Next 84	FISCAL YEAR Thereafter 85
Estimated Total Cost	$ 30,000	$ 0	$ 0	$ 30,000	$ 30,000
Personal Services	20,000		0	20,000	20,000
Current Expense	10,000	0	0	10,000	10,000
Repairs and Alterations	0		0	0	
Equipment	0		0	0	
Others	0		0	0	

2. Explanation of above estimates. Personal services: ½ FTE for professional and ½ FTE for clerical staff. Current expense includes legal advertising, court reporter fees and supplies. Most work will occur toward end of FY 84 and early FY 85. Program will not exist in FY 86.

3. Date _____ Agency _____

Signature of Agency Head

Greg C. Richardson

Signature of Authorized Representative

EMERGENCY FILING

WEST VIRGINIA LEGISLATIVE RULES
HEALTH CARE COST REVIEW AUTHORITY

Legislative Rules for the Limitation
on Hospital Gross Patient Revenue

Chapter 16-29B
Series I
(1983)

EMERGENCY FILING

WEST VIRGINIA LEGISLATIVE RULES
HEALTH CARE COST REVIEW AUTHORITY

Legislative Rules for the Limitation on Hospital Gross Patient Revenue

Chapter 16-29B
Series I
(1983)

TABLE OF CONTENTS

EMERGENCY FILING

WEST VIRGINIA LEGISLATIVE RULES
HEALTH CARE COST REVIEW AUTHORITY

Chapter 16-29B
Series I
(1983)

Subject: Limitation on Hospital Gross Patient Revenue

Section 1. General.

1.01. Scope. These legislative rules shall be used to determine hospitals' compliance with the limitations placed on the rate of increase for each hospital's gross patient revenue during the period prior to the establishment of rate schedules by the Health Care Cost Revenue Authority. These legislative rules supplement Code §16-29B-1 et seq. and must be read in conjunction with it.

1.02. Authority. These legislative rules are issued under the authority of §§16-29B-1 et seq., 16-5F-3, 29A-2-9, 29A-3-15, and 29B-1-3 of the Code.

1.03. Filing Date. These legislative rules were promulgated on June 22, 1983, and were filed in the Office of the Secretary of State on June 22, 1983.

1.04. Effective Date. These rules become effective upon the later date of either their filing or the lifting of the injunction against their enforcement issued in United Hospital Center v. Rockefeller, No. 83-84-C (N.D. W.Va. May 22, 1983) and are filed under the emergency provisions of §29A-3-15 of the Code and shall remain in effect for a period of one hundred and eighty days and such rules may be renewed for another one hundred and eighty day period pursuant to the provisions of the beforementioned statute.

Section 2. Definitions. As used in the regulations, all terms have the same meaning as provided in the definition section (Code §16-29B-2) of the statutes. Verbatim definitions, therefore, are not repeated here. Definitions set forth below amplify and clarify the statutory definitions or define terms not specifically set forth in the statute.

2.01. Authority means the Health Care Cost Review Authority established in Code §16-29B-5.

2.02. Base Period means the twelve months covering the period February 1, 1982 to January 31, 1983.

2.03. Contractual Allowance to Third Party Payors means the uncollectible difference between a hospital's charges posted for services and the rates paid by third party payors in accordance with contracts between the third party payors and the hospital.

2.04. Control Period for a hospital means the period from February 1, 1983 to, and including, the month in which the Authority establishes the hospital's initial rate schedule which shall not be prior to March, 1984.

2.05. Gross Patient Revenue means the total amount of charges posted by a hospital for services rendered to patients in a given period of time (e.g., month or year).

2.06. Gross Patient Revenue As Most Recently Reported means the gross patient revenue reported under Code §16-5F-4 for the base period.

2.07. Interested Persons means persons on the Authority's general mailing list and persons who have requested to be notified of the review of a specific application.

2.08. Net Patient Revenue means the total amount of revenue actually received by a hospital in a given period of time (e.g., month or year) for services rendered to patients.

2.09. Proportion of Medicare, Medicaid or Charity Care Patients means the ratio of a hospital's uncollectible accounts, charity and contractual allowances to its gross patient revenue for a fiscal year as reported in its audited financial statement.

Section 3. Gross Patient Revenue to be Allowed Hospitals During the Control Period.

3.01. General. During the control period, no hospital shall earn gross patient revenues in excess of that allowed by the provisions of these rules. The amount of allowed gross patient revenue shall be calculated by the hospital and verified by the Authority. This calculation shall be made after the end of the hospital's fiscal year ending in 1984 and after the Authority sets the initial rate schedule for the hospital and shall be reported within one hundred and twenty days of the end of that fiscal year in a form and manner prescribed by the Authority. Any gross patient revenue in excess of that allowed by these rules shall be paid to the Authority in a manner prescribed by the Authority. The Authority may take into consideration the impact of the amount payable on the hospital's solvency in establishing a schedule of payment of excess gross patient revenue to the Authority. Payment due the Authority also may be assigned by the Authority to future patients by directing a hospital to reduce rates.

3.02. Allowed Rate of Increase in Gross Patient Revenue. The allowed rate of increase in a hospital's gross patient revenue during the control period shall be twelve per cent per annum, adjusted for changes in the hospital's proportion of medicare, medicaid or charity care patients. A set of allowed rates shall be calculated for each hospital consisting of a rate for the first twelve months of the control period and a rate for the remainder of the

control period. The rate for the first twelve months shall be based on the information reported in the hospital's audited financial statement for the fiscal year ending in 1983. The rate for the remaining portion of the control period shall be based on the hospital's audited financial statement for the fiscal year ending in 1984.

The formulas for calculating the allowed rates of increase are as follows:

$$r_1 = \frac{12}{100} \left(1 + f_1 \frac{R2-R1}{R1} \right)$$

$$r_2 = \frac{12}{100} \left(1 + f_2 \frac{R3-R2}{R2} \right)$$

where r_1 = Allowed per annum rate of increase in gross patient revenue for first twelve months of control period.

r_2 = Allowed per annum rate of increase in gross patient revenue for remaining months of control period.

f = The mathematical formula to calculate a factor unique to each hospital's circumstance that assures all hospitals an equal rate of allowed increase in net patient revenue, regardless of any changes that occur in the proportion of medicare, medicaid or charity care patients. This factor eliminates any incentive for a hospital to increase its net patient revenue by reducing its proportion of medicare, medicaid or charity care patients. It also eliminates the adverse effects on net patient revenue of hospital's that experience an increase in their proportion of medicare, medicaid or charity care patients.

$$f_1 = \frac{9.33\ R1}{1-R2}$$

$$f_2 = \frac{9.33\ R2}{1-R3}$$

R = Proportion of medicare, medicaid or charity care patients.

R_1 = Proportion for fiscal year ending in 1982.

R_2 = Proportion for fiscal year ending in 1983.

R_3 = Proportion for fiscal year ending in 1984.

3.03. Calculation of Gross Patient Revenue Allowed in Control Period.

3.03.01. The amount of gross patient revenue allowed a hospital for the first twelve months of the control period shall be the gross patient revenue reported for the base period times the sum of one plus the allowed rate of increase for the twelve months:

$$GPR_1 = GPR_B \ (1 + r_1)$$

where: GPR_1 = Gross patient revenue allowed for first twelve months of control period.

GPR_B = Gross patient revenue reported by the hospital for the base period.

r_1 = Allowed per annum rate of increase for period as calculated in formula in §3.02.

3.03.02. The amount of gross patient revenue allowed a hospital for the remaining portion of the control period shall be the gross patient revenue allowed for the first twelve months times the sum of one plus the allowed rate of increase for remaining months of the control period times the ratio of the number of months remaining in the control period to twelve.

$$GPR_2 = GPR_1 \ (1 + r_2) \ \frac{n}{12}$$

where: GPR_2 = Gross patient revenue allowed for the remaining portion of the control period.

r_2 = Allowed per annum rate of increase for period as calculated in formula in §3.02.

n = number of months from February 1, 1984 to, and including, the month the Authority establishes the initial rate schedule.

3.03.03. The total amount of gross patient revenue allowed a hospital during the control period shall be the sum of:

(a) the gross patient revenue allowed for the first twelve months (GPR_1),

(b) the gross patient revenue allowed for the remaining portion of the control period (GPR_2), and

(c) such amount that the Authority may, upon application of a hospital, determine to be necessary as a result of projects undertaken in conformance with certificate of need approvals or exemptions issued in accordance with Article 2D of Chapter 16 of the Code.

Section 4. Determination of Certificate of Need Related Adjustments to Allowed Gross Patient Revenue.

4.01. Application for an Adjustment

4.01.01. Criteria for submission of application. After a hospital's fiscal year ending in 1983, the hospital may submit one consolidated application to the Authority for an adjustment to the amount of gross patient revenue that would otherwise be allowed for the control period if:

(a) It has undertaken one or more projects (excluding projects solely related to nonpatient care activities, e.g., parking garages, physician office buildings or solely for the purpose of replacing obsolete equipment) in conformance with a certificate of need decision or exemption letter issued pursuant to Article 2D of Chapter 16 of the Code;

(b) The gross patient revenues reported by the hospital for the base period do not fully reflect obligations or volume changes

directly related to projects in (a) that were completed subsequent to July 1, 1981; and

(c) The projected amount of allowed gross patient revenue for the control period based on the allowed rates of increase is an amount less than the amount of gross patient revenue projected to be required sufficient for the hospital to prevent insolvency or undue financial hardship;

4.01.02. Contents of Application. An application for an adjustment shall include:

(a) Identification of applicant hospital;

(b) Copy of governing body's approval of the application and written authorization empowering specified individual (s) to sign and act on its behalf;

(c) Copies of the certificate of need decisions and exemption letters covering all the projects to be considered in making a determination of the adjustment to be allowed;

(d) The total amount of adjustment to be considered by the Authority, including a table of the proportionate amounts attributable to each project;

(e) Such information, data and analysis necessary to:

(1) Demonstrate that the hospital is entitled to apply for an adjustment;

(2) Explain the hospital's basis for the amount of adjustment requested; and

(f) Evidence of the hospital's publication of a legal advertisement in a newspaper having general circulation in the county of the

hospital indicating the hospital's intent to apply to the Authority for an adjustment to the amount of allowed gross patient revenue and specifying the times, place and manner members of the public may read the application and make copies at a rate not to exceed twenty-five cents a page.

4.02. Review Process.

4.02.01. Designation of Staff Examiner. Within ten days of receipt of an application for an adjustment to the allowed gross patient revenue, the Authority shall designate an individual to be staff examiner for the application. The examiner designated may be an employee of the Authority, of another division of the Health Department, or of another agency of State government.

4.02.02. Notification of Review. Within ten days of the receipt of all parts of an application, the Authority shall notify the applicant by certified mail of the commencement of the review of the application. Public notice shall also be given and include a legal advertisement in the Charleston Daily Mail and Gazette newspapers, a local or daily newspaper in the county of the applicant's hospital, and mail notice to interested persons. Said notice shall include:

(a) Name of applicant's hospital;

(b) Amount of adjustment requested and brief description of basis for adjustment;

(c) Availability of the application for review and copying;

(d) Name and address of the staff examiner for receiving written comments;

(e) Date at least thirty days subsequent to publication of the notice by when any written comments on the application shall be submitted to the staff examiner; and

(f) Anticipated date, not less than sixty days following publication of the notice, by when the staff examiner shall issue a report of proposed findings of fact and conclusions of law.

4.02.03. Issuance of Report by the Staff Examiner. By the date specified in the notice, the staff examiner shall submit to the Authority a report containing proposed findings of fact and conclusions of law on the application, including analyses and evaluation of evidence in support of those findings. Prior to the issuance of the report, the staff examiner may request additional information and explanations from the hospital and may extend the time by when the report is to be issued in order to allow the hospital time to supply the requested information or explanations.

4.02.04. Hearing on Application and Staff Examiner's Report. The Authority, upon receiving the staff examiner's report, shall send to the hospital a copy of the report and notice of an opportunity for any person to request within 30 days a hearing on the Hospital's application and the staff examiner's report. Interested persons who were mailed notice of review shall be mailed a notice of the staff examiner's report and the opportunity to request a hearing within 30 days.

If a hearing is not requested, the Authority shall issue its decision in accordance with Section 4.03 infra as if a hearing were held.

If a hearing is requested, notice of the hearing shall be published in the same newspapers in which the notice of review was published. The hearing notice shall include:

(a) Name of applicant hospital;

(b) Staff Examiners proposed finding on the amount of adjustment to be allowed;

(c) Date of hearing which shall be not less than ten days following notice.

(d) Time and location of hearing.

The Authority shall designate one of its members to be the hearing officer.

Parties to the hearing shall include the applicant, the staff examiner and any affected party.

Parties may call witnesses to introduce additional evidence and testify on the evidence previously submitted, and they may cross-examine witnesses; however, the Authority may, if the new evidence is significant, remand the matter to a staff examiner for a new review.

4.03. Issuance of Authority's Decision on the Application. Hearings and decisions shall be in accordance with §16-29B-12 of the Code. Until the Authority adopts procedural rules for hearings, the Authority shall conduct its hearings and issue its decisions in a manner prescribed in the West Virginia Procedural Rules, Board of Health, Chapter 16-1, Series I, 1981, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, except that in such procedural rules reference to the "director," the "department of health," and the "agency" shall mean the Authority, and appeals shall be taken in accordance with Code §16-29B-13. The aforementioned procedural rules are incorporated herein by reference.

Following the conclusion of the public hearing, the Authority shall issue to the parties its decision on the application determining what, if any, amount

shall be permitted as an adjustment to the amount of gross patient revenue allowable during the control period. The Authority's decision shall include at least the following findings on:

1. Whether or not the hospital has incurred obligations or increased its volume subsequent to February 1, 1982 directly as a consequence of projects undertaken in conformance with certificate of need decisions and exemptions;
2. Whether or not such obligations and volume changes represent probable cause for the hospital's gross patient revenue during the control period to exceed the amount allowed for that period;
3. The amount of adjustment determined to be necessary to prevent the hospital's insolvency or undue financial hardship.

Section 5. Reporting Required

5.01. Within forty-five days of the effective date of these rules, each hospital shall submit to the Authority a certified report of its gross patient revenue for each month from June, 1981 through January, 1983.

5.02. Within forty-five days of the end of the month in which the Authority establishes a hospital's initial rate schedules, such hospital shall submit to the Authority a certified report of its gross patient revenue for each month in its control period.

Section 6. Decisions and Records Available. Decisions and records of the Authority may be inspected in accordance with §29B-1-3 of the Code and copied at a charge of 25 cents per page.

Section 7. Severability. If any provisions of these rules or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or the application of these rules which can be

given effect without the invalid provisions or application, and to this end the provisions of these rules are declared to be severable.

WEST VIRGINIA LEGISLATIVE RULES
HEALTH CARE COST REVIEW AUTHORITY

Legislative Rules for the Limitation on Hospital Gross Patient Revenue

INDEX

Index