

**TITLE 65  
LEGISLATIVE RULES  
HEALTH CARE COST REVIEW AUTHORITY**

**SERIES 2  
FREEZE ON HOSPITAL RATES AND GRANTING OF  
TEMPORARY RATE INCREASES**

**§65-2-1. General.**

1.1. Scope. -- These legislative rules shall be used to implement a freeze on hospital rates at the level they were on February 1, 1983 and to grant temporary changes to those rates during the period prior to the establishment of rate schedules by the Health Care Cost Review Authority. These legislative rules supplement the Health Care Cost Review Authority Act (West Virginia Code, section one, article twenty-nine-b, chapter sixteen et seq.) and must be read in conjunction with it.

1.2. Authority. -- W. Va. Code §16-29B-1 et seq., §16-5F-3, §29A-2-9, §29A-3-15 and §29B-1-3

1.3. Filing Date. -- April 18, 1984.

1.4. Effective Date. -- May 18, 1984.

1.5. Designation of responsibility. -- The Director of the State Department of Health shall consider and decide upon temporary rate changes in accordance with the provisions of these rules until July 1984 or until the Health Care Cost Review Authority itself undertakes the reviews.

1.6. Rules limited to temporary rate changes. -- These are rules for temporary rate changes only. Decisions made or actions taken pursuant to the rules by either the Health Care Cost Review Authority or the Director of the Department of Health shall not be construed as establishing precedents or policies for the Authority's future design of hospital rate regulations or their enforcement.

**§65-2-2. Definitions.**

As used in the regulations, all terms have the same meaning as provided in the definition section (West Virginia Code, section three, article twenty-nine-b, chapter sixteen) of the Health Care Cost Review Authority Act. Definitions set forth below reiterate, amplify and clarify the statutory definitions or define terms not specifically set forth in the statute.

2.1. Accreditation means:

(a) Being recognized by the Joint Commission on Accreditation of Hospitals as meeting its standards of accreditation; or

(b) Being certified by the Health Care Financing Administration of the United States Department of Health and Human Services as meeting its conditions of participation in the Medicare and Medicaid programs; or

(c) Being licensed as a hospital by the West Virginia Department of Health.

2.2. "Admissions -Inpatient" means formal acceptance by a hospital of a patient who is to receive physician, dental or allied services while lodged in a hospital (excluding newborns, but including neonatal admissions).

2.3. "Authority" means either the Health Care Cost Review Authority or the Director of the State Department of Health, whichever entity is considering and deciding upon the temporary rate change request.

2.4. "Charges" means the economic value established for accounting purposes of the goods

and services a hospital provides for all classes of purchasers.

2.5. "Cost Reimbursements" means the negotiated or contracted amount payable to a hospital for goods and services rendered to a designated class of purchasers: **Provided**, That the amount negotiated or contracted for is cost-based. Examples of classes of purchasers are Medicare beneficiaries, Medicaid beneficiaries, subscribers of specific cost-based insurance programs, some health maintenance organizations and other groups as defined by the Authority or the Director.

2.6. "Deductions From Gross Patient Revenue" means the amount of a hospital's uncollectible accounts, charity and contractual allowances.

2.7. "Equivalent Admissions" means:

Total Patient Revenue  
(Inpatient Revenue)  
(Inpatient Admissions)

2.8. "Gross Patient Revenues" means the total amount of charges posted by a hospital for the services rendered to patients.

2.9. "Interested Persons" means persons on the Authority's general mailing list and persons who have requested to be notified of the review of an application.

2.10. "Legally Restricted Funds" means amounts which are not available for the payment of current operating expenses because; (1) the funds are from contributions of assets whose use by the organization was explicitly stipulated by their donors and remains limited by those conditions; or (2) the funds are subject to other externally enforceable contracts or agreements that circumscribe the organization's use of specific assets and provide that the resulting limits cannot be amended or revoked by the organization's officers or directors.

2.11. "Operating Expenses" means salaries and wages, employee benefits, fees to individuals and organizations, supplies, purchased services, other expenses including interest and depreciation and assessments by the Authority.

2.12. "Rates" means all value given or money payable to hospitals for health care services, including fees, charges and cost reimbursements.

2.13. "Return On Equity" means the excess of revenues over expenses divided by the quantity of assets minus liabilities usually averaged over a given period of time.

$$\text{Return on equity} = \frac{\text{excess revenues over expenses}}{\text{assets} - \text{liabilities}}$$

2.14. "Temporary Rate Change" means any increase or decrease to charges, fees, or cost reimbursements in effect on February 1, 1983, approved by the Authority in accordance with the provisions of these rules.

2.15. "Third Party Payor" means any natural person, persons, corporation or government entity responsible for payment for patient care services rendered by hospitals.

### **§65-2-3. Freeze On Hospital Rates.**

Except as otherwise provided, upon the effective date of these regulations and thereafter until such time as the Authority establishes the initial rate schedule for a hospital pursuant to West Virginia Code section nineteen, article twenty-nine-b, chapter sixteen, a hospital's rates (including fees, charges and cost reimbursements) for services shall be those rates that were in effect on February 1, 1983.

### **§65-2-4. Temporary Rate Changes Allowed.**

A hospital may be allowed a temporary rate change if the change is in the public interest and is:

(a) Necessary to prevent insolvency, undue financial hardship or to maintain accreditation; or

(b) Necessary to cover the cost of a nondeferrable emergency repair; or

(c) A negotiated or contracted change in cost reimbursements; or

(d) A reduction in rates.

4.1. Public notice of a temporary rate change application. -- A hospital may apply for a temporary rate change by filing an application with the Authority and by publishing, within three (3) business days of the filing of the application, a legal notice of its intention to apply for a temporary rate change in a newspaper having general circulation in the county in which the hospital is situated. The legal notice shall include the reason, as allowed in this section, for the change. The notice shall also include a schedule of the particular rates to be changed in a format prescribed by the Authority. If the rate change is to take effect without review, the notice shall contain the date on which the rate change shall go into effect. The notice shall state that a copy of the application is available at the hospital for inspection and copying by the public from nine a.m. to five p.m. Monday through Friday.

Rate changes associated with the Medicare Diagnostic-Related Group reimbursement and methodology are exempt from the requirement of publishing the schedule of rates stated above in their public notice. The hospitals will be required to submit an application to the Authority as outlined in Section 5.5.1 of these rules.

#### 4.1.1. When rates put into effect.

(a) In general, temporary rate changes necessary to prevent insolvency or undue financial hardship may go into effect after either expedited or standard review of the application and approval.

(b) Temporary rate changes for emergency repairs, for changes in cost

reimbursement agreements or contracts, or for rate reductions may go into effect immediately upon filing of the application and publishing of the notice.

(c) A temporary rate change application which establishes that an immediate rate change is necessary to prevent imminent insolvency or financial hardship which, if not granted immediately, will cause the hospital to cease operation or file a bankruptcy petition, will go into effect immediately, subject to later review.

(d) Except for applications concerning federal Medicaid and Medicare, rates put into effect immediately may be:

(1) Suspended by the Authority if it has reason to believe that the application or notice contains incomplete, false or otherwise inadequate information; and

(2) Subject to refund or reduction or both if the hospital fails to meet the criteria and standards necessary for a rate change.

4.2. Temporary rate changes made prior to the effective date.

4.2.1. Hospitals that changed rates after February 1, 1983. -- A hospital that made a rate change after February 1, 1983 but prior to the effective date of these regulations shall apply for approval from the Authority in order to maintain those rates. Until action is taken by the Authority, the rate change may remain in effect. The Authority shall either approve the rate change or direct that the rate change be rescinded and the rates be returned to the February 1, 1983 level. The question of payment of excess gross patient revenue, if any, shall be deferred in accordance with Section 3.1 of the Rules for the Limitation of Hospital Gross Patient Revenue, Series 1, Chapter 16-29B of the West Virginia Code. Action by the Authority disapproving the rate change shall not bar the hospital from later filing a rate change application. A hospital may appeal a disapproval under this subsection in accordance with Section 5.8 et seq. of these regulations.

4.2.2. Hospitals that established new services after February 1, 1983. -- A hospital that established new services after February 1, 1983, but prior to the effective date of these regulations may maintain the charges for those services by publishing legal notice of those charges and providing the Authority with a copy of the notice, however, if the new service was subject to Certificate of Need review, and if any of the charges for the new services exceed those in the approved Certificate of Need application, then the hospital must submit to the Authority evidence to justify the increased charges. The Authority shall then either approve, disapprove or modify the increase in charges.

Legal notice for new services shall be published in a newspaper having general circulation in the county in which the hospital is situated and shall include a description of the service or services and the charges therefor.

4.3. Relationship of temporary rate change to gross patient revenue limit. -- Temporary rate changes granted pursuant to these regulations may result in an adjustment to the amount of gross patient revenue otherwise allowed a hospital in accordance with the regulations of the Authority governing the Limitation on Hospital Gross Patient Revenues or during the setting of the hospital's initial rate schedule.

#### **§65-2-5. Temporary Rate Change Procedures.**

5.1. General. -- The Authority may approve hospital applications for temporary rate changes by an order of approval containing findings of fact to substantiate the public interest in and necessity for the temporary rate change and the amount and form of the change. There will be three (3) types of approval procedures: Approval without review, approval following expedited review and approval following regular review.

5.2. Types of applications which are eligible for approval without review. -- The types of applications which are eligible for approval without review are:

(a) Applications for reductions in rates. When a hospital applies for a reduction in rates, the Authority may issue an order of approval for that hospital without review; and

(b) Applications for a temporary rate change in a cost reimbursement contract or agreement negotiated for a class of purchasers by a third party payor. In this type of application, the Authority may assume the validity of the costs, and may issue an order of approval for the newly agreed upon rates without review.

5.3. Types of applications which are eligible for expedited review. -- The types of applications which are eligible for expedited review are:

(a) Applications concerning an emergency repair. When a hospital applies for a change in rates due to a nondeferrable emergency, the Authority shall determine this type of application eligible for an expedited review;

(b) Applications which meet the standards of reasonableness described in Section 6 of these rules. Applications which meet the standards of reasonableness for the key financial projections, will be eligible for expedited review; and

(c) Applications which do not fall within the applicable standards of reasonableness, but from which the Authority can readily find without further investigation that the rate change is in the public interest and is necessary to prevent insolvency or undue financial hardship will be eligible for expedited review.

The Authority may request additional information during the expedited review period if it deems such information necessary for the review. If, during the expedited review period, a hospital fails to respond to the Authority's request for additional information within ten (10) working days, the expedited review period may be extended until the information is received or, at the discretion of the Authority, the application may be determined to be ineligible for expedited review.

5.4. Regular review. -- All applications not eligible for approval without review or expedited review will follow the regular review.

5.5. Application for a temporary rate change.

5.5.1. Contents of applications which are eligible for approval without review. -- Applications for reductions in rates and applications for a temporary rate change in a cost reimbursement contract or agreement negotiated for a class of purchasers by a third party payor shall include at least the following:

(a) A schedule of the new rates put into effect;

(b) A schedule of the rates which were in effect prior to the implementation of the new rates; and

(c) In the case of a rate change in a cost reimbursement contract or agreement, a copy of the new contract.

5.5.2. Contents of application for expedited or regular review. -- All applications for expedited or regular review for a temporary rate change shall be made in a format prescribed by the Authority and shall include at least the following:

(a) Identification of applicant hospital;

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

(c) The reason, in accordance with Section 4 of these rules, that the temporary rate change is being requested;

(d) The key financial projections. Evidence that key financial projections meet the standards of reasonableness in Section 6.2 et seq. of these rules; or if they do not, additional

evidence to justify any amount by which a projection is not within standard;

The key financial projections are: (1) Gross patient revenue, (2) changes in deductions of gross patient revenue, (3) net patient revenue, (4) operating expenses, (5) other operating and nonoperating revenue, (6) bond and loan covenants, (7) expenses associated with emergency repairs, and (8) expenses associated with accreditation requirement.

(e) The following financial statements prepared in accordance with generally accepted accounting principles certified as being true, by the hospital's governing board, and presented in a format prescribed by the Authority:

(1) Statement of income and expenses, balance sheet, and statement of change in financial position for the hospital's three (3) preceding fiscal years;

(2) Statement of revenue and expenses, balance sheet, and statement of change in financial position to date;

(3) Appropriate projection of revenue and expenses, balance sheet, and statement of change in financial position for the remaining portion of the fiscal year; and

(4) Appropriate projection of revenue and expense, balance sheet and statement of change in financial position for the next fiscal year.

(f) A schedule of assumptions for the current and next fiscal year including, at a minimum, assumptions regarding anticipated changes in patient volume, staffing, inflationary increases in supplies, utility costs, wages, etc.

(g) Identification of responsible individual to be contacted for additional information.

5.5.3. Submission of proof of publication. -- The applicant shall submit proof of the publication of the legal notice required by

Section 4.1 of these rules within five (5) days of publication.

5.6. Review of application for completeness and initial determinations. -- Within fifteen (15) days of receipt of an application, the Authority shall determine its completeness and eligibility for expedited or regular review, as provided for under Section 5.5 of these rules.

In the case of an incomplete application, the Authority may request additional information and, until the receipt of that information, the Authority may defer further action on the application.

5.7. Expedited and regular review process.

5.7.1. Notification of review. -- Upon receipt of an application from a hospital the Authority shall appoint a staff examiner who shall notify the applicant of the commencement of the review of the application. The hospital shall place a legal advertisement in a newspaper having general circulation in the county in which the hospital is situated and shall include:

- (a) Name of applicant hospital;
- (b) Type and amount of rate change requested;
- (c) Identification of responsible hospital representative to contact for inspection and copying of application;
- (d) In the case of a regular review, the date at least thirty (30) days subsequent to publication of the notice by when written comments on the application shall be submitted to the Authority; and
- (e) The date by when the Authority expects to issue an order on the hospital's need for a rate change.

The Authority shall mail notice containing the same information to interested person on file in the Authority's office.

5.7.2. Issuance of order by the Authority. -- By the date specified in the notice of the review, the Authority shall issue an order on a hospital's application for a temporary rate change unless the Authority makes a formal finding that additional time is required and states the reason for the postponement. The order shall contain findings of fact and conclusions of law and shall analyze and evaluate evidence in support of those findings. Action on a hospital's application for rate change will be determined in accordance with the criteria, standards, and methods of these regulations.

The form of the rate change approved may be specified by the Authority depending on the type of change requested and other applicable circumstances.

5.8. Reconsideration hearing on Authority's order.

5.8.1. Request for reconsideration hearing. -- The Authority shall send to the hospital a copy of the Section 5.7.2 order and a notice of an opportunity for any person to request within thirty (30) days a hearing on the hospital's application and the order. Interested persons who were mailed notice of review shall be mailed a notice of the order and the opportunity to request a hearing within thirty (30) days.

5.8.2. Effect of request for reconsideration hearing on order of approval. -- If a hearing is requested, the rate change as specified in the Section 5.7.2 order of approval shall be effective. If the rates allowed by the order are decreased after a reconsideration hearing, the Authority may order refunds or reductions or both in rates for the amount disallowed as the result of the hearing.

5.8.3. Notice of hearing. -- Notice of the hearing shall be published in the same newspapers in which the Section 5.7.1 notice of review was published. The hearing notice shall include:

- (a) Name of applicant hospital;

(b) Brief description of order being contested;

(c) Date of hearing which shall be not less than ten (10) days following notice; and

(d) Time and location of hearing.

Parties to the hearing shall include the applicant and any interested party that establishes to the Authority that it is an affected party. Petitions by interested parties to be treated as an affected party shall be filed either with that party's request for a hearing, or if that party seeks to intervene into another party's requested hearing, at least five (5) days prior to the scheduled date of the hearing. The petition shall set forth the factual basis for the party's claim to be an affected party.

Parties may call witnesses to introduce additional evidence and testify on the evidence previously submitted, and they may cross-examine witnesses.

5.8.4. Issuance of Authority's order after hearing of the application. -- The Authority shall conduct the hearing and issue its final order after hearing in a manner prescribed in the West Virginia Procedural Rules, Board of Health, West Virginia Code, article one, chapter sixteen, Series 1, 1981, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, which are incorporated herein by reference.

Within forty-five (45) days of the conclusion of the hearing, the Authority shall issue to the parties its decision affirming, revoking or otherwise modifying the contested Section 5.7.1 order. Appeals of this the final order shall be taken in accordance with the Health Care Cost Review Authority Act (West Virginia Code, section thirteen, article twenty-nine-b, chapter sixteen).

5.9. Final notice of temporary rate change. -- When the Authority's final order differs from the schedule of temporary rates published in accordance with Section 4.1 of these rules, the hospital shall publish a second legal notice of the amended schedule no later than ten (10) days

following the issuance of the final order. A copy of such notice shall be sent to the Authority.

#### **§65-2-6. Standards Of Reasonableness.**

6.1. General. -- The standards identified in this section apply throughout these regulations in identifying the reasonableness of applications and qualifications for expedited review.

An application will be deemed reasonable and eligible for expedited review if its key financial projections fall within the standard described in this section for each projection.

When a hospital's key financial projections, using the most probable and accurate assumptions, fall within the standard, no further evidence is required in its application for a temporary rate change. The Authority may use these projections as its findings in determining if the rate change is in the public interest and is necessary to prevent insolvency or undue financial hardship: Provided, however, That during the review the Authority may request additional information and explanation and may revise such projection to an amount it determines reasonable for use in making the findings on the rate change.

A hospital may submit an application containing key projections that are not within the standards. In that event, the hospital shall submit additional information explaining the reasons for the projections exceeding the standards. The Authority shall review the submissions and either find the application to be reasonable and to qualify for expedited review if the Board is of the opinion that the nonstandard projections are reasonable based on the facts presented or transfer the application to the regular review procedure.

If the application is transferred to the regular review process, the Authority may revise the hospital's projections to amounts determined to be reasonable for use in determining the rate change, if any, to be allowed. In that event, a Section 5.7.2 order of approval shall be issued; however, if the Authority is unable to determine that the amounts claimed by a hospital in its use and transfer of funds are reasonable, then the review

of the application shall either terminate or a Section 5.7.2 order may be issued which conditions approval of a rate change upon the hospital's taking of specified corrective actions.

6.2. Determination of the standards of reasonableness. -- The standards of reasonableness for the required key financial projections are:

6.2.1. Gross patient revenue. -- Hospital projections of gross patient revenue will be deemed reasonable if the projection is not more than that allowed by Series 1 Regulations.

6.2.2. Changes in deductions from gross patient revenue. -- Projected amounts for charity, uncollectible accounts and contractual allowances will be deemed reasonable if the total annual rate of change is less than seventeen percent (17%).

6.2.3. Net patient revenue. -- A hospital's projection of net patient revenue for the current fiscal year will be deemed reasonable if the projection is equal to or greater than the amount established by Table 65.2A at the end of this regulation.

6.2.4. Operating expenses. -- A hospital's projected operating expense claimed in an application will be deemed reasonable if the projected expenses (excluding expenses associated with an emergency repair or maintaining accreditation) are less than the operating expense limits established by the calculations found in Table 65.2B at the end of this regulation.

(Wages, salaries and benefits paid to or on behalf of nonsupervisory employees shall not be subject to review unless the Board first determines that such wages, salaries and benefits may be unreasonably or uncustomarily high or low.)

6.2.5. Revenue other than patient service revenue. -- A hospital's projection of its current fiscal year operating revenue from nonpatient services will be deemed reasonable if it is not less than the amount projected or actual

for the last fiscal year. A hospital's projection of its current fiscal year nonoperating revenue will be deemed reasonable if interest income is not less than the amount projected or actual for the last fiscal year.

6.2.6. Bond and loan covenants. -- Bond and loan rate covenants agreed to by a hospital subsequent to the effective date of these regulations shall be deemed reasonable if they do not require a hospital to have net income before deducting interest, depreciation, amortization and financing expenses in excess of one hundred twenty percent (120%) of maximum annual debt service.

6.2.7. Expenses associated with an emergency repair. -- An expense claimed by a hospital as necessary for an emergency repair will be deemed reasonable if the claimed expense is supported by a letter from the hospital's governing board certifying that the expense is reasonable and related only to the claimed repair. The letter shall further certify that the repair is necessary to correct a situation that threatens the health and safety of patients or employees or to prevent an impending event likely within the next twelve (12) months that could threaten the health and safety of patients or employees.

6.2.8. Expenses associated with an accreditation requirement. -- An expense claimed by a hospital as necessary to maintain accreditation will be deemed reasonable if the claimed action is supported by a letter from the Joint Commission on Accreditation of Hospitals or the West Virginia Department of Health conditioning future accreditation, licensure or Medicare/Medicaid certification on actions to be taken or initiated prior to the end of the hospital's next fiscal year; and either

(a) The claimed expense of the action is related to physical or mechanical changes or improvements and is supported by a letter from the hospital's governing board certifying the expense to be reasonable and related only to the claimed repair; or

(b) The claimed expense of the action is related to staffing requirements, and there is evidence that such expense is a new expense and not included in the hospital's operating expense for the last fiscal year.

#### **§65-2-7. Criteria For Rate Increases.**

In order to approve a rate change, the Authority must be able to find that the amount of change to be approved is in the public interest and would not impose an unreasonable financial burden on purchasers or classes of purchasers. The Authority must further find that the change is necessary to prevent financial insolvency, to maintain accreditation, to make emergency repairs or to prevent undue financial hardship.

7.1. Public interest. -- It is in the public interest to maintain a system of financially sound hospitals in West Virginia at reasonable cost to purchasers and payors of hospital services. A rate change will be found to be in the public interest and would not be an unreasonable financial burden upon purchasers if (a) the amount of the rate change will not cause the hospital to unreasonably exceed its gross patient revenue limit as otherwise allowed by the regulations of this Authority for the Limitation on Hospital Gross Patient Revenue and (b) a hospital's key financial projections either fall within the standards of reasonableness defined in Section 6 of these rules or are otherwise determined by the Authority to be reasonable.

7.2. Criteria for determining that a rate change is necessary to prevent insolvency. -- Insolvency is the condition that exists or is impending when a hospital has insufficient funds to meet its obligations. A rate change will be found to be necessary to prevent insolvency if:

(a) The hospital evidences the establishment of services subsequent to February 1, 1983, requiring revenue to support the expenses of the new services;

(b) The hospital evidences that expenditures required for emergency repairs or to

maintain accreditation exceed current net revenues without a rate change; or

(c) The hospital evidences, based on reasonable projections, that it will have insufficient revenues to cover operating expenses as calculated by the formulas found in Table 65-2C at the end of this regulation, where:

7.3. Criteria for determining that a rate change is necessary to prevent undue financial hardship. -- Undue financial hardship is the weakening of a hospital's capital structure over a long period. A rate increase will be found to be necessary to prevent undue financial hardship if:

(a) A hospital's rate of return on equity averages less than three percent (3%) over the five (5) year period comprised of the three (3) preceding fiscal years, the current and the next fiscal years; or

(b) The hospital has loan or bond covenants requiring a net income in excess of that projected for the current fiscal year without a rate change.

#### **§65-2-8. Methods For Determining The Amount Of Rate Change.**

8.1. Amount necessary to prevent insolvency due to establishment of new services.

(a) When a rate change is found necessary to prevent insolvency due to the establishment of a new service, the initial rate shall be determined as follows in Table 65-2D at the end of this regulation where;

(b) In establishing rates at a facility with no patient service revenue prior to February 1983, initial rates for individual services shall be established by the facility provided if the new service was subject to a CON review, and if any of the charges for the new services exceed those in the CON application, then the hospital must submit to the Authority evidence to justify the increased charges. The Authority shall then either

approve or disapprove or modify the increase in charges.

8.2. Amount necessary to prevent insolvency due to inadequate revenue. -- When a rate change is found necessary to prevent insolvency due to projected expenses in excess of revenue, the amount of rate change shall be determined as follows where: (See Table 65-2E at the end of this regulation.)

8.3. Amount necessary to prevent undue financial hardship due to inadequate rate of return. -- When a rate change is found necessary to prevent undue financial hardship due to an inadequate rate of return on equity averaged over a five (5) year period, the amount of rate change shall be determined as follows where.

8.4. Amount necessary to prevent undue financial hardship due to loan or bond covenants. -- When a rate change is found necessary to prevent undue financial hardship because of the requirements of loan or bond covenants, the amount of rate change shall equal the additional revenue projected to be necessary for the hospital to meet its covenant obligations.

#### **§65-2-9. Decisions And Records Available.**

Decisions and records of the Authority may be inspected in accordance with section three, article one, chapter twenty-nine-b of the Code and copied at a charge of twenty-five cents (\$.25) per page.

#### **§65-2-10. 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 applications 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.

**TABLE 65-2A**

Where  $G_1$  = Gross patient revenue for the most recently completed fiscal year.

$G_2$  = Gross patient revenues projected for the current fiscal year.

$A_1$  = Equivalent admissions during most recently completed fiscal year.

$A_2$  = Equivalent admissions projected for current fiscal year.

$A_3$  = Equivalent admissions projected for next fiscal year.

$b$  = Percentage increase of a rate change, if any, during that portion of the most recently completed fiscal year (expressed as a decimal).

$c$  = Number of months rate change in effect.

$d_2$  = Projected deductions from gross patient revenue for charity, uncollectible accounts, allowances during current fiscal year.

$d_3$  = Projected deductions from gross patient revenue for charity, uncollectible accounts, and contractual allowances during succeeding fiscal year.

$N_2$  = Net patient revenue projected for the current fiscal year.

$$N_2 = \left[ \frac{G_1}{1 + BC/12} \right] \left[ 1 + \frac{A_2 - A_1}{A_1} \right] (1 + b) - (d_2); \text{ and}$$

$N_3$  = Net patient revenue projected for the next fiscal year.

$$N_3 = G_2 \left[ \frac{1 + A_3 - A_2}{A_2} \right] - (d_3)$$

**TABLE 65-2B**

Where  $U_1$  = Operating expenses for the most recently completed fiscal year excluding wages, salaries and fringe benefits for nonsupervisory personnel.

$U_2$  = Projected expenses for the current fiscal year excluding wages, salaries and fringe benefits for nonsupervisory personnel.

$A_1$  = Equivalent admissions during most recently completed fiscal year.

$A_2$  = Equivalent admissions projected for current fiscal year.

$A_3$  = Equivalent admissions projected for next fiscal year.

$i$  = An annual inflation factor derived from the hospital market basket index as calculated and published by Data Resources, Inc.

$i_1$  = Inflation factor for adjusting completed fiscal year expense to current fiscal year.

$i_2$  = Inflation factor for adjusting current fiscal year expense limit to next fiscal year expense limit.

$a$  = Adjustment factor for inflation and intensity/technology changes (one percent).

$a_1$  = Adjustment factor for current fiscal year.  
=  $1 + i_1 + .01$

$a_2$  = Adjustment factor for next fiscal year.  
=  $1 + i_2 + .01$

$W_2$  = Wages, salaries and fringe benefits for nonsupervisory personnel for the current fiscal year.

$W_3$  = Wages, salaries and fringe benefits for nonsupervisory personnel projected for the next fiscal year.

$L_2$  = Operating expense limit for current fiscal year.

$$L_2 = \left[ U_1 \left( 1 + 1/2 \left( \frac{A_2 - A_1}{A_1} \right) \right) \right] a_1 + W_2$$

$L_3$  = Operating expense limit for following fiscal year.

$$L_3 = \left[ U_2 \left( 1 + 1/2 \left( \frac{A_3 - A_2}{A_2} \right) \right) \right] a_2 + W_3$$

TABLE 65-2C

$N_2$  = Projected net patient revenue for current fiscal year.

$N_3$  = Projected net patient revenue for the next fiscal year.

$r_2$  = Other operating revenue and nonoperating revenue for the current fiscal year.

$r_3$  = Other operating revenue and nonoperating revenue for the next fiscal year.

$e_2$  = Expense for emergency repair or expense to maintain accreditation during current fiscal year.

$e_3$  = Expense for emergency repair or expense to maintain accreditation for succeeding fiscal year.

$O_2$  = Projected operating expense for current fiscal year.

$O_3$  = Projected operating expense for succeeding fiscal year.

$s$  = Funds from other sources which are not legally restricted and can be reasonably utilized to offset current operating expenses.

When for current fiscal year.

$$(N_2 + r_2 + s) - (O_2 + e_2) < 0$$

When for succeeding year.

$$(N_3 + r_3 + s) - (O_3 + e_3) < 0$$

TABLE 65-2D

$O_s$  = Projected annual reasonable operating expenses associated with new service.

$V_3$  = Projected annual volume for the next fiscal year.

$V_2$  = Projected volume for current fiscal year.

$G_1$  = Gross patient revenue for most recently completed fiscal year.

$N_1$  = Net patient revenue for most recently completed fiscal year.

$A_s$  = Amount of allowed increase in revenue for new services.

$$A_s = \left( \frac{O_s}{V_3} \right) (V_2) \left( \frac{G_1}{N_1} \right)$$

TABLE 65-2E

$n_2$  = Projected net patient revenue for current fiscal year.

$r_2$  = Other operating and nonoperating revenue for the current fiscal year.

$s$  = Funds available from other sources which are not legally restricted and can be reasonably utilized to offset current operating expenses.

$O_2$  = Projected operating expense for current fiscal year.

$e_2$  = Reasonable cash expense necessary for emergency repair or accreditation requirements incurred or to be incurred during current fiscal year.

$A_r$  = Amount of allowed increase in revenue

$$A_r = (O_2 + e_2) - (N_2 + r_2 + s)$$

TABLE 65-2F

$O_2$  = Reasonable operating expense projected for current fiscal year.

$e_2$  = Projected cash expenses for emergency repair or accreditation requirements incurred or to be incurred prior to end of current fiscal year not included in  $O_2$ .

$r_2$  = Other operating and nonoperating income for the current fiscal year.

$N_2$  = Net patient revenue projected for current fiscal year.

$A_H$  = Amount of change allowed.

$$A_H = O_2 + e_2 - r_2 - N_2$$

WEST VIRGINIA LEGISLATIVE RULES  
HEALTH CARE COST REVIEW AUTHORITY

Legislative Rules for the Freeze on Hospital Rates  
and Granting of Temporary Rate Increases

Chapter 16-29B  
Series II  
(1984)

FINAL PROMULGATION

WEST VIRGINIA LEGISLATIVE RULES  
HEALTH CARE COST REVIEW AUTHORITY

Legislative Rules for the Freeze on Hospital Rates  
and Granting of Temporary Rate Increases

Chapter 16-29B  
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*Title 65*

~~WEST VIRGINIA~~ LEGISLATIVE RULES  
HEALTH CARE COST REVIEW AUTHORITY

~~Chapter 16-29B~~  
Series ~~HE 2~~  
(1984)*e*

Subject: Freeze on Hospital Rates and Granting of Temporary Rate Increases

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Section 1. General.

1.01. Scope. These legislative rules shall be used to implement a freeze on hospital rates at the level they were on February 1, 1983 and to grant temporary changes to those rates during the period prior to the establishment of rate schedules by the Health Care Cost Review Authority. These legislative rules supplement the Health Care Cost Review Authority Act (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 the Health Care Cost Review Authority Act (Code §16-29B-1 et seq.), the Hospital Financial Disclosure Act (Code §16-5F-3), the Administrative Procedures Act (Code §29A-2-9, 29A-3-15), and the Freedom of Information Act (Code §29B-1-3).

1.03. Filing Date. These legislative rules were authorized on March 10, 1984, and were filed in the Office of the Secretary of State on April 18, 1984.

1.04. Effective Date. These rules become effective thirty (30) days after filing with the Secretary of State. *May 18, 1984*

1.05. Designation of Responsibility. The Director of the State Department of Health shall consider and decide upon temporary rate changes in accordance with the provisions of these rules until July, 1984, or until the Health Care Cost Review Authority itself undertakes the reviews.

1.06. Rules Limited to Temporary Rate Changes. These are rules for temporary rate changes only. Decisions made or actions taken pursuant to the rules by either the Health Care Cost Review Authority or the Director of the Department of Health shall not be construed as establishing precedents or policies for the Authority's future design of hospital rate regulations or their enforcement.

Section 2. Definitions. As used in the regulations, all terms have the same meaning as provided in the definition section (Code §16-29B-3) of the Health Care Cost Review Authority Act. Definitions set forth below reiterate, amplify and clarify the statutory definitions or define terms not specifically set forth in the statute.

2.01. Accreditation means:

(a) Being recognized by the Joint Commission on Accreditation of Hospitals as meeting its standards of accreditation; or

(b) Being certified by the Health Care Financing Administration of the U.S. Department of Health and Human Services as meeting its conditions of participation in the Medicare and Medicaid programs; or

(c) Being licensed as a hospital by the West Virginia Department of Health.

2.02. Admissions - Inpatient means formal acceptance by a hospital of a patient who is to receive physician, dental, or allied services while lodged in a hospital (excluding newborns, but including neonatal admissions).

2.03. Authority means either the Health Care Cost Review Authority or the Director of the State Department of Health, whichever entity is considering and deciding upon the temporary rate change request.

2.04. Charges means the economic value established for accounting purposes of the goods and services a hospital provides for all classes of purchasers.

2.05. Cost reimbursements means the negotiated or contracted amount payable to a hospital for goods and services rendered to a designated class of purchasers provided that the amount negotiated or contracted for is cost-based. Examples of classes of purchasers are Medicare beneficiaries, Medicaid beneficiaries, subscribers of specific cost-based insurance programs, some health maintenance organizations, and other groups as defined by the Authority or the Director.

2.06. Deductions from gross patient revenue means the amount of a hospital's uncollectible accounts, charity and contractual allowances.

2.07. Equivalent admissions means: 
$$\frac{\text{Total Patient Revenue}}{\left( \frac{\text{Inpatient Revenue}}{\text{Inpatient Admissions}} \right)}$$

2.08. Gross patient revenues means the total amount of charges posted by a hospital for the services rendered to patients.

2.09. Interested persons means persons on the Authority's general mailing list and persons who have requested to be notified of the review of an application.

2.10. Legally restricted funds means amounts which are not available for the payment of current operating expenses because; 1) the funds are from contributions of assets whose use by the organization was explicitly stipulated by their donors and remains limited by those conditions or 2) the funds are subject to other externally enforceable contracts or agreements that

circumscribe the organization's use of specific assets and provide that the resulting limits cannot be amended or revoked by the organization's officers or directors.

2.11. Operating expenses means salaries and wages, employee benefits, fees to individuals and organizations, supplies, purchased services, other expenses including interest and depreciation, and assessments by the Authority.

2.12. Rates means all value given or money payable to hospitals for health care services, including fees, charges and cost reimbursements.

2.13. Return on equity means the excess of revenues over expenses divided by the quantity of assets minus liabilities usually averaged over a given period of time.

$$\text{Return on equity} = \frac{\text{excess revenues over expenses}}{\text{assets} - \text{liabilities}}$$

2.14. Temporary rate change means any increase or decrease to charges, fees, or cost reimbursements in effect on February 1, 1983, approved by the Authority in accordance with the provisions of these rules.

2.15. Third party payor means any natural person, persons, corporation or government entity responsible for payment for patient care services rendered by hospitals.

### Section 3. Freeze on Hospital Rates

Except as otherwise provided, upon the effective date of these regulations and thereafter until such time as the Authority establishes the initial rate schedule for a hospital pursuant to Code Section §16-29B-19, a hospital's rates (including fees, charges and cost reimbursements) for services shall be those rates that were in effect on February 1, 1983.

Section 4. Temporary Rate Changes Allowed

A hospital may be allowed a temporary rate change if the change is in the public interest and is:

(a) Necessary to prevent insolvency, undue financial hardship, or to maintain accreditation; or

(b) Necessary to cover the cost of a nondeferrable emergency repair; or

(c) A negotiated or contracted change in cost reimbursements; or

(d) A reduction in rates.

4.01. Public Notice of a Temporary Rate Change Application. A hospital may apply for a temporary rate change by filing an application with the Authority and by publishing, within three (3) business days of the filing of the application, a legal notice of its intention to apply for a temporary rate change in a newspaper having general circulation in the county in which the hospital is situated. The legal notice shall include the reason, as allowed in this Section, for the change. The notice shall also include a schedule of the particular rates to be changed in a format prescribed by the Authority. If the rate change is to take effect without review, the notice shall contain the date on which the rate change shall go into effect. The notice shall state that a copy of the application is available at the hospital for inspection and copying by the public from 9:00am to 5:00pm Monday through Friday.

Rate changes associated with the Medicare Diagnostic-Related Group reimbursement and methodology are exempt from the requirement of publishing the schedule of rates stated above in their public notice. The hospitals will be required to submit an application to the Authority as outlined in Section 5.05.01.

4.01.01. When Rates Put Into Effect.

(a) In general, temporary rate changes necessary to prevent insolvency or undue financial hardship may go into effect after either expedited or standard review of the application and approval.

(b) Temporary rate changes for emergency repairs, for changes in cost reimbursement agreements or contracts, or for rate reductions may go into effect immediately upon filing of the application and publishing of the notice.

(c) A temporary rate change application which establishes that an immediate rate change is necessary to prevent imminent insolvency or financial hardship which, if not granted immediately, will cause the hospital to cease operation, or file a bankruptcy petition, will go into effect immediately, subject to later review.

(d) Except for applications concerning federal medicaid and medicare, rates put into effect immediately may be:

(1) Suspended by the Authority if it has reason to believe that the application or notice contains incomplete, false or otherwise inadequate information; and

(2) Subject to refund or reduction or both if the hospital fails to meet the criteria and standards necessary for a rate change.

4.02. Temporary Rate Changes Made Prior to the Effective Date.

4.02.01. Hospitals That Changed Rates After February 1, 1983. A hospital that made a rate change after February 1, 1983 but prior to the effective date of these regulations shall apply for approval from the Authority in order to maintain those rates. Until action is taken by the Authority, the rate change may remain in effect. The Authority shall either approve the

rate change or direct that the rate change be rescinded and the rates be returned to the February 1, 1983 level. The question of payment of excess gross patient revenue, if any, shall be deferred in accordance with Section 3.01 of the rules for the Limitation of Hospital Gross Patient Revenue, Series I, Chapter 16-29B. Action by the Authority disapproving the rate change shall not bar the hospital from later filing a rate change application. A hospital may appeal a disapproval under this subsection in accordance with Section 5.08 et seq of these regulations.

4.02.02. Hospitals That Established New Services After February 1, 1983. A hospital that established new services after February 1, 1983, but prior to the effective date of these regulations may maintain the charges for those services by publishing legal notice of those charges and providing the authority with a copy of the notice, however, if the new service was subject to certificate of need review, and if any of the charges for the new services exceed those in the approved certificate of need application, then the hospital must submit to the Authority evidence to justify the increased charges. The Authority shall then either approve, disapprove or modify the increase in charges.

Legal notice for new services shall be published in a newspaper having general circulation in the county in which the hospital is situated and shall include a description of the service or services and the charges therefor.

4.03. Relationship of Temporary Rate Change to Gross Patient Revenue Limit. Temporary rate changes granted pursuant to these regulations may result in an adjustment to the amount of gross patient revenue otherwise allowed a hospital in accordance with the regulations of the authority governing the Limitation on Hospital Gross Patient Revenues or during the setting of the hospital's initial rate schedule.

Section 5. Temporary Rate Change Procedures.

5.01. General. The Authority may approve hospital applications for temporary rate changes by an Order of Approval containing findings of fact to substantiate the public interest in and necessity for the temporary rate change and the amount and form of the change. There will be three types of approval procedures: approval without review, approval following expedited review, and approval following regular review.

5.02. Types of Applications Which Are Eligible For Approval Without Review. The types of applications which are eligible for approval without review are:

(a) Applications for reductions in rates. When a hospital applies for a reduction in rates, the Authority may issue an order of approval for that hospital without review.

(b) Applications for a temporary rate change in a cost reimbursement contract or agreement negotiated for a class of purchasers by a third party payor. In this type of application, the Authority may assume the validity of the costs, and may issue an order of approval for the newly agreed upon rates without review.

5.03. Types of Applications Which Are Eligible for Expedited Review. The types of applications which are eligible for expedited review are:

(a) Applications concerning an emergency repair. When a hospital applies for a change in rates due to a nondeferrable emergency, the Authority shall determine this type of application eligible for an expedited review;

(b) Applications which meet the Standards of Reasonableness described in Section 6. Applications which meet the Standards of Reasonableness

for the key financial projections, will be eligible for expedited review; and

(c) Applications which do not fall within the applicable Standards of Reasonableness, but from which the Authority can readily find without further investigation that the rate change is in the public interest and is necessary to prevent insolvency or undue financial hardship will be eligible for expedited review.

The Authority may request additional information during the expedited review period if it deems such information necessary for the review. If, during the expedited review period, a hospital fails to respond to the Authority's request for additional information within ten (10) working days, the expedited review period may be extended until the information is received or, at the discretion of the Authority, the application may be determined to be ineligible for expedited review.

5.04. Regular Review. All applications not eligible for approval without review or expedited review will follow the regular review.

5.05. Application for a Temporary Rate Change.

5.05.01. Contents of Applications Which Are Eligible for Approval Without Review. Applications for reductions in rates, and applications for a temporary rate change in a cost reimbursement contract or agreement negotiated for a class of purchasers by a third party payor shall include at least the following:

(a) A schedule of the new rates put into effect;

(b) A schedule of the rates which were in effect prior to the implementation of the new rates; and

(c) In the case of a rate change in a cost reimbursement contract or agreement, a copy of the new contract.

5.05.02. Contents of Application for Expedited or Regular Review. All applications for expedited or regular review for a temporary rate change shall be made in a format prescribed by the Authority and shall include at least the following:

- (a) Identification of applicant hospital;
- (b) Copy of governing body's approval by resolution of the application and written authorization empowering specified individual(s) to sign and act on its behalf;
- (c) The reason, in accordance with Section 4, that the temporary rate change is being requested;
- (d) The key financial projections. Evidence that key financial projections meet the standards of reasonableness in 6.02 et seq.; or if they do not, additional evidence to justify any amount by which a projection is not within standard.

The key financial projections are: (1) gross patient revenue, (2) changes in deductions of gross patient revenue, (3) net patient revenue, (4) operating expenses, (5) other operating and nonoperating revenue, (6) bond and loan covenants, (7) expenses associated with emergency repairs, and (8) expenses associated with accreditation requirement.

(e) The following financial statements prepared in accordance with generally accepted accounting principles certified as being true, by the hospital's governing board, and presented in a format prescribed by the Authority:

- (1) Statement of income and expenses, balance sheet, and statement of change in financial position for the hospital's three preceding fiscal years;

(2) Statement of revenue and expenses, balance sheet, and statement of change in financial position to date;

(3) Appropriate projection of revenue and expenses, balance sheet, and statement of change in financial position for the remaining portion of the fiscal year; and

(4) Appropriate projection of revenue and expense, balance sheet and statement of change in financial position for the next fiscal year.

(f) A schedule of assumptions for the current and next fiscal year including, at a minimum, assumptions regarding anticipated changes in patient volume, staffing, inflationary increases in supplies, utility costs, wages, etc.

(g) Identification of responsible individual to be contacted for additional information.

5.05.03. Submission of Proof of Publication. The applicant shall submit proof of the publication of the legal notice required by the section 4.01 within five (5) days of publication.

5.06. Review of Application for Completeness and Initial Determinations.

Within fifteen days of receipt of an application, the Authority shall determine its completeness and eligibility for expedited or regular review, as provided for under Section 5.05.

In the case of an incomplete application, the Authority may request additional information and, until the receipt of that information, the Authority may defer further action on the application.

5.07. Expedited and Regular Review Process.

5.07.01. Notification of Review. Upon receipt of an application from a hospital the Authority shall appoint a staff examiner who shall notify the applicant of the commencement of the review of the application. The hospital

shall place a legal advertisement in a newspaper having general circulation in the county in which the hospital is situated and shall include:

- (a) Name of applicant hospital;
- (b) Type and amount of rate change requested;
- (c) Identification of responsible hospital representative to contact for inspection and copying of application;
- (d) In the case of a regular review, the date at least thirty days subsequent to publication of the notice by when written comments on the application shall be submitted to the Authority; and
- (e) The date by when the Authority expects to issue an Order on the hospital's need for a rate change.

The Authority shall mail notice containing the same information to interested person on file in the Authority's office.

5.07.02. Issuance of Order by the Authority. By the date specified in the notice of the review, the Authority shall issue an Order on a hospital's application for a temporary rate change unless the Authority makes a formal finding that additional time is required and states the reason for the postponement. The Order shall contain findings of fact and conclusions of law and shall analyze and evaluate evidence in support of those findings. Action on a hospital's application for rate change will be determined in accordance with the criteria, standards, and methods of these regulations.

The form of the rate change approved may be specified by the Authority depending on the type of change requested and other applicable circumstances.

5.08. Reconsideration Hearing on Authority's Order.

5.08.01. Request for Reconsideration Hearing. The Authority shall send to the hospital a copy of the Section 5.07.02 Order and a notice of an opportunity for any person to request within thirty days a hearing on the hospital's application and the Order. Interested persons who were mailed notice of review shall be mailed a notice of the Order and the opportunity to request a hearing within thirty days.

5.08.02. Effect of Request for Reconsideration Hearing on Order of Approval. If a hearing is requested, the rate change as specified in the Section 5.07.02 Order of approval shall be effective. If the rates allowed by the Order are decreased after a reconsideration hearing, the Authority may order refunds or reductions or both in rates for the amount disallowed as the result of the hearing.

5.08.03. Notice of Hearing. Notice of the hearing shall be published in the same newspapers in which the Section 5.07.01 notice of review was published. The hearing notice shall include:

- (a) Name of applicant hospital;
- (b) Brief description of order being contested;
- (c) Date of hearing which shall be not less than ten days following notice;
- (d) Time and location of hearing.

Parties to the hearing shall include the applicant and any interested party that establishes to the Authority that it is an affected party. Petitions by interested parties to be treated as an affected party shall be filed either with that party's request for a hearing, or if that party seeks to intervene into another party's requested hearing, at least five days prior to the sched-

uled date of the hearing. The petition shall set forth the factual basis for the party's claim to be an affected party.

Parties may call witnesses to introduce additional evidence and testify on the evidence previously submitted, and they may cross-examine witnesses.

5.08.04. Issuance of Authority's Order After Hearing of the Application. The Authority shall conduct the hearing and issue its final order after hearing 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, which are incorporated herein by reference.

Within forty-five (45) days of the conclusion of the hearing, the Authority shall issue to the parties its decision affirming, revoking or otherwise modifying the contested Section 5.07.01 Order. Appeals of this the final Order shall be taken in accordance with the Health Care Cost Review Authority Act (§16-29B-13).

5.09. Final Notice of Temporary Rate Change. When the Authority's final order differs from the schedule of temporary rates published in accordance with Section 4.01 of these rules, the hospital shall publish a second legal notice of the amended schedule no later than ten (10) days following the issuance of the final order. A copy of such notice shall be sent to the Authority.

Section 6. Standards of Reasonableness.

6.01. General. The standards identified in this section apply throughout these regulations in identifying the reasonableness of applications and qualifications for expedited review.

An application will be deemed reasonable and eligible for expedited review if its key financial projections fall within the standard described in this section for each projection.

When a hospital's key financial projections, using the most probable and accurate assumptions, fall within the standard, no further evidence is required in its application for a temporary rate change. The Authority may use these projections as its findings in determining if the rate change is in the public interest and is necessary to prevent insolvency or undue financial hardship; provided, however, during the review the Authority may request additional information and explanation and may revise such projection to an amount it determines reasonable for use in making the findings on the rate change.

A hospital may submit an application containing key projections that are not within the standards. In that event, the hospital shall submit additional information explaining the reasons for the projections exceeding the standards. The Authority shall review the submissions and either find the application to be reasonable and to qualify for expedited review if the Board is of the opinion that the nonstandard projections are reasonable based on the facts presented, or transfer the application to the regular review procedure.

If the application is transferred to the regular review process, the Authority may revise the hospital's projections to amounts determined to be reasonable for use in determining the rate change, if any, to be allowed. In that event, a Section 5.07.02 order of approval shall be issued; however, if the Authority is unable to determine that the amounts claimed by a hospital in its use and transfer of funds are reasonable, then the review of the appli-

cation shall either terminate or a Section 5.07.02 order may be issued which conditions approval of a rate change upon the hospital's taking of specified corrective actions.

6.02. Determination of the Standards of Reasonableness. The standards of reasonableness for the required key financial projections are:

6.02.01. Gross Patient Revenue. Hospital projections of gross patient revenue will be deemed reasonable if the projection is not more than that allowed by Series I Regulations.

6.02.02. Changes in Deductions from Gross Patient Revenue. Projected amounts for charity, uncollectible accounts, and contractual allowances will be deemed reasonable if the total annual rate of change is less than 17%.

6.02.03. Net Patient Revenue. A hospital's projection of net patient revenue for the current fiscal year will be deemed reasonable if the projection is equal to or greater than the amount established by the following calculations:

Where  $G_1$  = Gross patient revenue for the most recently completed fiscal year

$G_2$  = Gross patient revenues projected for the current fiscal year

$A_1$  = Equivalent admissions during most recently completed fiscal year

$A_2$  = Equivalent admissions projected for current fiscal year

$A_3$  = Equivalent admissions projected for next fiscal year

$b$  = Percentage increase of a rate change, if any, during that portion of the most recently completed fiscal year (expressed as a decimal)

$c$  = Number of months rate change in effect

$d_2$  = Projected deductions from gross patient revenue for charity, uncollectible accounts, allowances during current fiscal year

$d_3$  = Projected deductions from gross patient revenue for charity, uncollectible accounts, and contractual allowances during succeeding fiscal year

$N_2$  = Net patient revenue projected for the current fiscal year

$$N_2 = \left[ \frac{G_1}{1+(bc/12)} \right] \left[ 1 + \frac{A_2 - A_1}{A_1} \right] [1 + b] - [d_2] ; \text{ and}$$

$N_3$  = Net patient revenue projected for the next fiscal year.

$$N_3 = G_2 \left[ 1 + \frac{A_3 - A_2}{A_2} \right] - [d_3]$$

6.02.04. Operating Expenses. A hospital's projected operating expense claimed in an application will be deemed reasonable if the projected expenses (excluding expenses associated with an emergency repair or maintaining accreditation) are less than the operating expense limits established by the following calculations:

Where  $U_1$  = Operating expenses for the most recently completed fiscal year excluding wages, salaries and fringe benefits for non-supervisory personnel

$U_2$  = Projected expenses for the current fiscal year excluding wages, salaries and fringe benefits for non-supervisory personnel

$A_1$  = Equivalent admissions during most recently completed fiscal year

$A_2$  = Equivalent admissions projected for current fiscal year

$A_3$  = Equivalent admissions projected for next fiscal year

$i$  = An annual inflation factor derived from the hospital market basket index as calculated and published by Data Resources, Inc.

$i_1$  = Inflation factor for adjusting completed fiscal year expense to current fiscal year

$i_2$  = Inflation factor for adjusting current fiscal year expense limit to next fiscal year expense limit.

$a$  = adjustment factor for inflation and intensity/technology changes (one percent)

$a_1$  = adjustment factor for current fiscal year  
 $= 1 + i_1 + .01$

$a_2$  = adjustment factor for next fiscal year  
 $= 1 + i_2 + .01$

$W_2$  = Wages, salaries and fringe benefits for non-supervisory personnel for the current fiscal year

$W_3$  = Wages, salaries and fringe benefits for non-supervisory personnel projected for the next fiscal year

$L_2$  = Operating expense limit for current fiscal year

$$L_2 = \left[ U_1 \left( 1 + \frac{1}{2} \left( \frac{A_2 - A_1}{A_1} \right) \right) \right] a_1 + W_2$$

$L_3$  = Operating expense limit for following fiscal year

$$L_3 = \left[ U_2 \left( 1 + \frac{1}{2} \left( \frac{A_3 - A_2}{A_2} \right) \right) \right] a_2 + W_3$$

(Wages, salaries and benefits paid to or on behalf of non-supervisory employees shall not be subject to review unless the board first determines that such wages, salaries and benefits may be unreasonably or uncustomarily high or low.)

6.02.05. Revenue Other Than Patient Service Revenue. A hospital's projection of its current fiscal year operating revenue from nonpatient services will be deemed reasonable if it is not less than the amount projected or actual for the last fiscal year. A hospital's projection of its current fiscal year nonoperating revenue will be deemed reasonable if interest income is not less than the amount projected or actual for the last fiscal year.

6.02.06. Bond and Loan Covenants. Bond and loan rate covenants agreed to by a hospital subsequent to the effective date of these regulations shall be deemed reasonable if they do not require a hospital to have net income before deducting interest, depreciation, amortization and financing expenses in excess of 120 percent of maximum annual debt service.

6.02.07. Expenses Associated with an Emergency Repair. An expense claimed by a hospital as necessary for an emergency repair will be deemed reasonable if the claimed expense is supported by a letter from the hospital's governing board certifying that the expense is reasonable and related only to the claimed repair. The letter shall further certify that the repair is necessary to correct a situation that threatens the health and safety of patients or employees or to prevent an impending event likely within the next twelve months that could threaten the health and safety of patients or employees.

6.02.08. Expenses Associated with an Accreditation Requirement. An expense claimed by a hospital as necessary to maintain accreditation will be deemed reasonable if the claimed action is supported by a letter from the

Joint Commission on Accreditation of Hospitals or the West Virginia Department of Health conditioning future accreditation, licensure or Medicare/Medicaid certification on actions to be taken or initiated prior to the end of the hospital's next fiscal year; and either

(a) the claimed expense of the action is related to physical or mechanical changes or improvements and is supported by a letter from the hospital's governing board certifying the expense to be reasonable and related only to the claimed repair; or

(b) the claimed expense of the action is related to staffing requirements, and there is evidence that such expense is a new expense and not included in the hospital's operating expense for the last fiscal year.

Section 7. Criteria For Rate Increases. In order to approve a rate change, the Authority must be able to find that the amount of change to be approved is in the public interest and would not impose an unreasonable financial burden on purchasers or classes of purchasers. The Authority must further find that the change is necessary to prevent financial insolvency, to maintain accreditation, to make emergency repairs, or to prevent undue financial hardship.

7.01. Public Interest. It is in the public interest to maintain a system of financially sound hospitals in West Virginia at reasonable cost to purchasers and payors of hospital services. A rate change will be found to be in the public interest and would not be an unreasonable financial burden upon purchasers if (a) the amount of the rate change will not cause the hospital to unreasonably exceed its gross patient revenue limit as otherwise allowed by the regulations of this Authority for the Limitation on Hospital Gross Patient Revenue and (b) a hospital's key financial projections either fall within the

standards of reasonableness defined in section 6 or are otherwise determined by the Authority to be reasonable.

7.02. Criteria for Determining That A Rate Change is Necessary to Prevent Insolvency. Insolvency is the condition that exists or is impending when a hospital has insufficient funds to meet its obligations. A rate change will be found to be necessary to prevent insolvency if:

(a) The hospital evidences the establishment of services subsequent to February 1, 1983, requiring revenue to support the expenses of the new services; or

(b) The hospital evidences that expenditures required for emergency repairs or to maintain accreditation exceed current net revenues without a rate change; or

(c) The hospital evidences, based on reasonable projections, that it will have insufficient revenues to cover operating expenses as calculated by the following formulas, where:

$N_2$  = Projected net patient revenue for current fiscal year

$N_3$  = Projected net patient revenue for the next fiscal year

$r_2$  = Other operating revenue and nonoperating revenue for the current fiscal year

$r_3$  = Other operating revenue and nonoperating revenue for the next fiscal year

$e_2$  = Expense for emergency repair or expense to maintain accreditation during current fiscal year

$e_3$  = Expense for emergency repair or expense to maintain accreditation for succeeding fiscal year

$O_2$  = Projected operating expense for current fiscal year

$O_3$  = Projected operating expense for succeeding fiscal year

s = Funds from other sources which are not legally restricted  
and can be reasonably utilized to offset current operating  
expenses

When for current fiscal year

$$[N_2 + r_2 + s] - [O_2 + e_2] < 0$$

When for succeeding year

$$[N_3 + r_3 + s] - [O_3 + e_3] < 0$$

7.03. Criteria for Determining That a Rate Change is Necessary to Prevent Undue Financial Hardship. Undue financial hardship is the weakening of a hospital's capital structure over a long period. A rate increase will be found to be necessary to prevent undue financial hardship if:

(a) A hospital's rate of return on equity averages less than 3% over the five-year period comprised of the three preceding fiscal years, the current and the next fiscal years; or

(b) The hospital has loan or bond covenants requiring a net income in excess of that projected for the current fiscal year without a rate change.

Section 8. Methods for Determining the Amount of Rate Change.

8.01. Amount Necessary to Prevent Insolvency Due To Establishment of New Services.

(a) When a rate change is found necessary to prevent insolvency due to the establishment of a new service, the initial rate shall be determined as follows where

$O_s$  = Projected annual reasonable operating expenses associated  
with new service

$V_3$  = Projected annual volume for the next fiscal year

$V_2$  = Projected volume for current fiscal year

$G_1$  = Gross patient revenue for most recently completed fiscal year

$N_1$  = Net patient revenue for most recently completed fiscal year

$A_s$  = Amount of allowed increase in revenue for new services

$$A_s = \left( \frac{O_s}{V_3} \right) (V_2) \left( \frac{G_1}{N_1} \right)$$

(b) In establishing rates at a facility with no patient service revenue prior to February, 1983, initial rates for individual services shall be established by the facility provided if the new service was subject to a CON review, and if any of the charges for the new services exceed those in the CON application, then the hospital must submit to the Authority evidence to justify the increased charges. The Authority shall then either approve or disapprove or modify the increase in charges.

8.02. Amount Necessary to Prevent Insolvency Due to Inadequate Revenue. When a rate change is found necessary to prevent insolvency due to projected expenses in excess of revenue, the amount of rate change shall be determined as follows where:

$N_2$  = Projected net patient revenue for current fiscal year

$r_2$  = Other operating and nonoperating revenue for the current fiscal year

$s$  = Funds available from other sources which are not legally restricted and can be reasonably utilized to offset current operating expenses

left  
out

left  
out

$O_2$  = Projected operating expense for current fiscal year

$e_2$  = Reasonable cash expense necessary for emergency repair or accreditation requirements incurred or to be incurred during current fiscal year

$A_r$  = Amount of allowed increase in revenue

$$A_r = [O_2 + e_2] - [N_2 + r_2 + s]$$

8.03. Amount Necessary to Prevent Undue Financial Hardship Due to

Inadequate Rate of Return. When a rate change is found necessary to prevent undue financial hardship due to an inadequate rate of return on equity averaged over a five-year period, the amount of rate change shall be determined as follows where

$O_2$  = Reasonable operating expense projected for current fiscal year

$e_2$  = Projected cash expenses for emergency repair or accreditation requirements incurred or to be incurred prior to end of current fiscal year not included in  $O_2$

$r_2$  = Other operating and nonoperating income for the current fiscal year

$N_2$  = Net patient revenue projected for current fiscal year

$A_H$  = Amount of change allowed

$$A_H = O_2 + e_2 - r_2 - N_2$$

8.04. Amount Necessary to Prevent Undue Financial Hardship Due to

Loan or Bond Covenants. When a rate change is found necessary to prevent undue financial hardship because of the requirements of loan or bond covenants, the amount of rate change shall equal the additional revenue projected to be necessary for the hospital to meet its covenant obligations.

Section 9. 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 10. 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 Freeze on Hospital Rates  
and Granting of Temporary Rate Increases

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