

NOTICE OF PUBLIC HEARING AND COMMENT PERIOD ON A PROPOSED RULE

PUBLIC HEARING

FILED
1987 JUN 15 PM 1:13
WALTER J. DALE

AGENCY: Health Care Cost Review Authority

RULE TYPE: Procedural

RULE TITLE: Procedural Rule For Requests For Hospital Rate Changes

A PUBLIC HEARING ON THE ABOVE PROPOSED RULE WILL BE HELD AT 2:00 p.m.

ON Monday, July 20, 1987 AT Suite 201, 100 Dee Drive,

Charleston, WV

COMMENTS ARE LIMITED TO: ORAL _____ WRITTEN _____ BOTH

COMMENTS MAY ALSO BE MAILED TO: Suite 201, 100 Dee Drive,

Charleston, WV 25311, ATN: John H. Kozak; by July 20, 1987

THE AUTHORITY REQUESTS THAT PERSONS WISHING TO MAKE COMMENTS AT THE HEARING MAKE AN EFFORT TO SUBMIT WRITTEN COMMENTS IN ORDER TO FACILITATE A REVIEW OF THESE COMMENTS.

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.



WALTER J. DALE

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Procedural Rule For Requests For Hospital Rate Changes

Type of Rule: Legislative Interpretive X Procedural

Agency Health Care Cost Review Authority Address Suite 201,
100 Dee Drive, Charleston, WV 25311

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

2. Explanation of above estimates:

The procedural rule replaces the already existing procedural rules. Since the rate review program is already in place and no change is expected in the costs of operating that program as a result of this rule, there should be no change as a result of this rule.

3. Objectives of these rules: This rule repeals the original procedural rules adopted in 1984 for rate review cases under West Virginia Code, § 16-29B-1 et seq. The new rule eliminates procedural requirements that are no longer necessary now that the program has been operating for three (3) years. In addition, the rule amends the process for obtaining temporary, emergency rate increases in keeping with the 1987 amendments to section 21 of the Act. The rule also puts into place the new automatic rate increase process for hospitals seeking increases in their gross inpatient revenues per discharge that are at or below the national rate of inflation for the hospital industry.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None.

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

The rule simplifies the rate review process in regard to increases in hospital rates relating to increases at the national rate of inflation in the hospital industry and for emergency rate increases. This simplification should result in lesser costs to the state's acute care hospitals for rate increase applications in those two areas.

C. Economic Impact on Citizens/Public at Large.

None.

Date: June 15, 1987

Signature of Agency Head or Authorized Representative

Walter J. Wade

WEST VIRGINIA PROCEDURAL RULE
HEALTH CARE COST REVIEW AUTHORITY
CHAPTER 16-29B

SERIES III

Title: PROCEDURAL RULE FOR REQUESTS
FOR HOSPITAL RATE CHANGES

- Section 1. General
2. Definitions
 3. Revenues paid by and rates set for federal medicare and medicaid programs.
 4. Permanent changes in the schedule of rates
 5. Rate of inflation increases
 6. Temporary changes in a hospital's rates
 7. Failure to comply with rules
 8. Additional information
 9. Time periods
 10. Decisions and records available
 11. Compliance reports
 12. Severability

WEST VIRGINIA PROCEDURAL RULE
HEALTH CARE COST REVIEW AUTHORITY
CHAPTER 16-29B

SERIES III

Title: PROCEDURAL RULE FOR REQUESTS
FOR HOSPITAL RATE CHANGES

Section 1. General

1.1. Scope - This procedural rule sets the procedure to be used to ascertain appropriate projections of gross revenues for hospitals, to set the amount of net revenue over expenditures that is appropriate for the effective operation of each hospital and to set rate schedules for each hospital. The procedural rule also sets forth time periods for the submission of applications by hospitals pertaining to rate schedules, increases therein, and for subsequent actions on the applications including hearings in contested cases. This rule also provides for emergency rate increases and rate increases at or below the rate of inflation for the hospital industry. This procedural rule supplements the Health Care Cost Review Authority Act, West Virginia Code, section one, article twenty-nine-b, chapter sixteen et seq., and the West Virginia Administrative Procedures Act, West Virginia Code, section one, article one, chapter twenty-nine-a et seq., and must be read in conjunction with those Acts.

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1.2. Authority - West Virginia Code § 16-29B-8, §§ 29A-2-9, -15 and § 29B-1-3.

1.3. Filing Date - June _____, 1987.

1.4. Effective Date - _____, 1987.

1.5. Repeal of Former Rule - This procedural rule repeals West Virginia Procedural Rule "Health Care Cost Review Authority, Chapter 16-29B, Series III, Procedural Rules For The Projecting Of Gross Revenues For Hospitals, Setting The Amount Of Net Revenue Over Expenditures For Hospitals And Setting Schedules Of Rates For Hospitals (1984)", filed August 13, 1984.

Section 2. Definitions

As used in this rule, all terms have the same meaning as provided in the definition section of the Health Care Cost Review Authority Act, West Virginia Code, section three, article twenty-nine-b, chapter sixteen. Definitions of additional terms are set forth below and whenever those terms are used, the following definitions apply, except where the context may expressly otherwise require.

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2.1. "Act" means the West Virginia Health Care Cost Review Authority Act, West Virginia Code, article twenty-nine-b, chapter sixteen.

2.2. "Authority" means the West Virginia Health Care Cost Review Authority, an autonomous division within the State Department of Health.

2.3. "Gross Revenue" means a hospital's gross patient revenue plus all operating and nonoperating revenues from whatever source.

2.4. "Hospital" means:

2.4.1. A facility subject to licensure as such under the provisions of West Virginia Code, article five-b, chapter sixteen; or

2.4.2. Any acute care facility operated by the state government which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons; but, in either event, does not include state mental health facilities, facilities primarily engaged in rendering psychiatric diagnosis, treatment and care or state long-term care facilities.

2.5. "Methodology" means the Hospital Cost Containment Methodology, together with all of its appendices. The methodology is a

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4.1. Application and proposed budget - The application shall contain information requested on forms provided by the Authority as attached hereto. In addition, the hospital must provide, in a written report, the information described in West Virginia Code, subdivision (2), subsection (a), section twenty-one, article twenty-nine-b, chapter sixteen. The proposed budget should be identical in content to the budget approved by the hospital's board. The budget must contain not only all usual information under generally accepted accounting principles for a budget, but must also contain a full and specific statement of all assumptions relied upon in preparing the budget. The hospital may also submit such additional information as it wishes. All applications for adjustments in gross patient revenue due to a new service should be supported by a certificate of need decision, if applicable. The request must also include projected utilization, a rate schedule and an operating budget which details revenues and direct expenses for the new service.

4.2. Public hearing - Upon receipt of the application and proposed budget, the board, if it considers necessary, may hold a public hearing on any proposed change or amendment. Such hearing shall be held no later than forty-five (45) days after receipt of the application and proposed budget. The hospital or an interested party may request a hearing which request may, in the discretion of the board, be granted.

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4.3. Hearings - The hearing shall be conducted pursuant to the provisions of West Virginia Code, section twelve, article twenty-nine-b, chapter sixteen, and West Virginia Code, section one, article five, chapter twenty-nine-a et seq. In addition, the Rules of Procedure for Contested Case Hearings and Declaratory Rulings, article one, chapter sixteen, Series I (1983), heretofore promulgated by the West Virginia Board of Health on December 30, 1982, are incorporated herein by reference and shall supplement the aforesaid Code provisions. The board or the hearing examiner may schedule and require attendance at a prehearing conference to be conducted by an officer appointed for that purpose by the board. The purposes of the prehearing conference shall be similar to the purposes of Rule 16, West Virginia Rules of Civil Procedure.

4.4. Review by the board - Upon receipt of the hospital's application and proposed budget, the Authority's staff shall submit to the board a proposed gross revenue limit and gross patient revenue limit for that hospital. The Authority's staff may also request a conference with the hospital's officials and any interested persons. Thereafter, the board shall issue an interim order setting the hospital's revenue limits. The interim order shall be sent by certified mail, return receipt requested, to the hospital. Within forty-five (45) days of receiving the interim order, the hospital shall file with the board a revised proposed budget and a proposed schedule of rates, each of which shall be drafted in accordance with the revenue limits set by the board. Thereafter, the board shall issue a final order setting final revenue limits, the hospital's budget and schedule of

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rates. The final order shall specify the effective date of any proposed changes. The final order shall be sent by certified mail, return receipt requested, to the hospital. The hospital's community shall be notified of the final order through an announcement in the local media.

The final order on any proposed change or amendment shall not be issued more than one hundred eighty (180) days from the date of filing of the application and proposed budget with the board. If the board fails to complete its review of the proposed change within the time period specified for the review, the proposed change shall be deemed to have been approved by the board.

4.5. Appeals from board's final order - Should the hospital or an interested party wish to contest the board's final order, the hospital or interested party shall file its appeal pursuant to the provisions of West Virginia Code, section thirteen, article twenty-nine-b, chapter sixteen.

4.6. Rates during hearings and appeals - In the event the board modifies the request of a hospital for a change in its rates so that the hospital obtains only a partial increase in its rate schedule, the hospital shall have the right to accept the benefits of the partial increase in rates and charge its purchasers accordingly without in any way adversely affecting or waiving its right to contest or appeal that portion of the decision and final order of the

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board which denied the remainder of the requested rate increase. Similarly, if an interested party contests or appeals the decision and final order of the board, the hospital may charge its purchasers in accordance with the board's decision and final order until the final order is subsequently modified.

4.7. Notice to the community - Contemporaneously with the filing of the application and proposed budget pursuant to section 4 of this rule, the hospital shall also cause to be published in a newspaper of general circulation in the county in which the hospital is located a legal advertisement setting forth the fact that the hospital is applying to the board for a change or amendment to its schedule of rates. The legal advertisement shall summarize the effect of the requested relief and shall further state that any person desiring to inspect the application and proposed budget may do so at the hospital during the hospital's regular business hours. Also, the legal advertisement shall advise the public that any person who claims to be an interested person in the proceedings for the changing or amending of the schedule of rates must file with the Authority a written notice setting forth the interested person's names, address and the facts relied upon to establish his or her interest. The legal advertisement must inform the public that interested persons must file this notice within thirty (30) days of the hospital's filing of its application with the Authority or else the Authority will, except for good cause shown, deny the interested party's notice. The Authority will then send notices of all proceedings and copies of all orders to those persons deemed to be interested in the matter. Proof of publication of the

legal advertisement by the hospital must be submitted to the Authority within ten (10) days of the filing of its application and proposed budget.

4.8. Reconsideration - In the event that a hospital or interested party wishes the board to reconsider a prior order, it shall file its request in writing and shall detail the grounds for the reconsideration. Such a request must be filed within twenty (20) days of the entry of the disputed order. A request for reconsideration shall toll the running of the period in which an appeal must be taken.

Section 5. Rate of inflation increases.

5.1. Any hospital which wishes to increase only its gross inpatient revenues per discharge for nonmedicare and nonmedicaid payors in an amount equal to or less than the rate of inflation for the hospital industry nationally shall do so in accordance with this rule.

5.2. At least five (5) days prior to instituting the increase, the hospital must notify the Authority of its intention to implement the increase. The notice shall include completion of the form attached to these rules for such increases.

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5.3. The hospital must inform the Authority of its inpatient utilization during the fiscal year prior to the date of the notice and the anticipated inpatient utilization for the fiscal year affected by the increase. The hospital shall also inform the Authority of the amount of gross inpatient revenue it received for the fiscal year prior to the increase and the amount of gross inpatient revenue it expects to receive during the fiscal year affected by the increase.

5.4. Within thirty (30) days after implementing the increase in its gross inpatient revenues per discharge for its nonmedicare and nonmedicaid payors, the hospital shall file an amendment to its schedule of rates and a revised budget both reflecting the effect of the increase.

5.5. The hospital shall determine the applicable rate of inflation for the hospital industry by referring to the most recent national forecasts of inflation in the hospital market basket of total operating costs as published by Data Resources, Inc., located in Washington, D.C. The hospital may request the Authority to provide it with this figure prior to filing the notice required by section 5.2 of this rule.

5.6. Within thirty (30) days of receiving the hospital's schedule of rates and revised budget as required by section 5.4, the Authority shall issue a decision approving or disapproving the increase put into effect by the hospital.

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The hospital is not prohibited from implementing the rate increase during this thirty (30) day period. The HCCRA's evaluation will be limited to the rate of increase for gross inpatient revenues per discharge for nonmedicare and nonmedicaid payors and will establish that the increase is equal to or less than the rate of inflation for the hospital industry nationally. The determination shall be made upon the facts presented by the hospital and the records on file with the Authority. The decision may be treated as a final order and an appeal or reconsideration may be requested by the hospital or an interested party pursuant to sections 4.5 and 4.8 of this rule.

5.7. Notwithstanding the provisions of section 5.6 of this rule, if the board subsequently determines that the increase put into effect by the hospital actually exceeded the national rate of inflation for the hospital industry, for whatever reason, the board may institute a review and investigation of the hospital's rates and budget and take such action as it deems necessary to establish a new rate schedule and also direct a refund to the hospital's patients or a temporary decrease in the hospital's rates if any of such should prove necessary. The decision resulting from any such review and investigation may be treated as a final order and an appeal or reconsideration may be requested by the hospital or an interested party pursuant to sections 4.5 and 4.8 of this rule.

5.8. This section is not available to any hospital which seeks to increase or decrease its outpatient revenue or its nonpatient revenues from

nonmedicare or nonmedicaid sources. In addition, if the hospital's anticipated inpatient utilization for the twelve (12) months following the increase is greater than what it actually experiences, the hospital's rate per discharge shall not be greater than that anticipated at the time of the increase.

5.9. In the event that the hospital actually experiences gross inpatient revenues per discharge for nonmedicare and nonmedicaid payors in excess of either the amount it anticipated or in excess of the applicable rate of inflation, then the hospital is informed that it may be subject to all of the penalties provided for by the Act including refunds and temporary rate decreases as provided for by West Virginia Code, subsection (d) of section twenty-one, article twenty-nine-b, chapter sixteen, and also the criminal provisions of West Virginia Code, section twenty-seven, article twenty-nine-b, chapter sixteen.

5.10. Hearings - In the event that either the Authority or an interested party requests a hearing on the increase, the hearing shall be conducted pursuant to section 4.3 of this rule.

Section 6. Temporary changes in a hospital's rates.

The legislative rules for the freeze on hospital rates and granting of temporary rate increases, West Virginia Code, article twenty-nine-b, chapter sixteen, Series II (1983), were drafted to implement Section 4 of the Act and to

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implement former Section 21(c) of the Act insofar as it pertained to Section 4 of the Act. Those rules do not have applicability to changes or amendments to a hospital's rate schedule.

6.1. Application for temporary rate change - In the event a hospital desires to obtain a temporary change in its schedule of rates, the hospital shall submit an application to the Authority which addresses the criteria set forth in Section 21(b) of the Act. The application must state the facts in support of the temporary rate change with specificity and not in a conclusory fashion, the amount of increases in rates required to alleviate its situation, and shall summarize the overall effect of the rate increase. The claim shall be verified (that is, sworn to under oath) by either the chairman of the hospital's governing body or by the chief executive officer of the hospital.

6.2. Immediate effectiveness of application - Upon receipt by the board of the application for a temporary rate change, the rate change shall be effective, at the hospital's discretion, immediately and until such time as the board may inform the hospital that the temporary rate change is to be modified to a stated amount or is not approved. If the rate increase is modified so that the hospital is granted only a partial increase in its rate schedule, the hospital may charge at the rate assigned by the board without resubmitting a request. The board's decision may be treated as a final order and an appeal or reconsideration may be requested by the hospital or an interested party pursuant

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to sections 4.5 and 4.8 of this rule. The order shall be issued by certified mail, return receipt requested, to the hospital. The final order shall set final revenue limits, the hospital's budget, and schedule or rates. The final order shall specify the effective date of any proposed changes.

The final order on any proposed change or amendment shall not be issued more than one hundred eighty (180) days from the date of filing of the application with the board. If the board fails to complete its review of the proposed change within the time period specified for the review, the proposed change shall be deemed to have been approved by the board.

6.3. Preferential review of application - After receipt of the claim for a temporary rate change, the board shall extend preference to hospitals demonstrating immediate risk of insolvency, or demonstrating substantial financial hardship, to maintain accreditation or for emergency repairs which in the discretion of the board justify temporary rate changes prior to the commencement of full review of the proposed rate change.

6.4. Full review of application - All claims for a temporary change in a hospital's schedule of rates shall be subject to full review by the board in accordance with the principles stated in section 4 et seq. of this rule; except that, the hospital shall cause the required legal advertisement to be published within seven (7) days of filing of the application for a temporary rate change and

the hospital need not submit the information normally contained in a Section 4.1 application and proposed budget, unless such information is subsequently requested by the board.

6.5. Following its review of the requested increase, the Authority may allow the temporary rate increase to become permanent, to deny any increase at all, to allow a lesser increase, or to allow a greater increase. In the event the Authority desires to deny or reduce the increase, the Authority may choose to either order a refund or a temporary rate decrease so as to compensate the hospital's patients and community for the disallowed increase while it was in place.

6.6. Hearings - In the event that either the Authority or an interested party requests a hearing on the increase, the hearing shall be conducted pursuant to section 4.3 of this rules.

Section 7. Failure to comply with rules

Failure by a hospital or an interested party to comply with any of the requirements of these rules shall subject the hospital or the interested party to sanctions including the possibility of denial of all requested relief in an appropriate case. Failure by a hospital or an interested party to comply with the time limits set forth in this rule may also, in the discretion of the board, cause

the time limits to be extended and the failing party shall be deemed to have waived the time periods set forth in the Act and these rules or the board may impose another appropriate sanction.

Section 8. Additional information

Should the board require additional information from a hospital or an interested party, then, in the discretion of the board, the various time limits imposed by this rule shall be tolled until the information is received by the board.

Section 9. Time periods

9.1. In each instance in this rule where a time period is stated, the period is intended to be a maximum period. In the event a given task is completed sooner than the stated period by the Authority, the board, a hospital or an interested party, then the next time period, if any, shall begin to elapse upon the actual completion date.

9.2. Calculation of time periods - Whenever in this rule the date by which some action is directed to be taken or accomplished would fall on a Saturday, Sunday or a state holiday, then the time for taking or accomplishing

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the action shall be extended to the next day which is not a Saturday, Sunday or a state holiday.

Section 10. Decisions and records available

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

Section 11. Compliance reports

The board may require compliance reports from a hospital midway and three-quarters of the way through the hospital's fiscal year. The information requested for the compliance report shall be listed on forms to be provided by the board.

Section 12. Severability

If any provisions of this rule or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of this rule which can be given effect without the invalid provisions or application and to this end the provisions of this rule are declared to be severable.

Hospital Name _____

Fiscal Year Ending _____

Hospital Number _____

Submission Date _____

**Instructions
For Proposed Increases Less Than
The Hospital Market Basket Component**

1. Enter the data requested for the relevant fiscal years.
2. Enter the total Gross Inpatient Revenue for fiscal years 1987 and 1988.
Note: This amount should include only nonmedicare and nonmedicaid payments, i.e. other payor amounts.
3. Enter the total number of patient discharges for fiscal years 1987 and 1988.
4. Calculate the revenue per discharge by dividing inpatient revenue by inpatient discharges.
5. Calculate the rate of increase in charge per discharge from fiscal year 1987 to fiscal year 1988.

	Description	Source	
1	Calculate gross inpatient revenue per discharge for 1987: a) gross inpatient revenue 1987 b) discharges 1987 c) inpatient revenue ÷ discharges = revenue per discharge	R-2 R-1 line 1a ÷ line 1b	
2	Calculate gross inpatient revenue per discharge for 1988: a) gross inpatient revenue 1988 b) discharges 1988 c) inpatient revenue ÷ discharges = revenue per discharge	R-2 R-1 line 1a ÷ line 1b	
3	Calculate the rate of increase for inpatient revenue per discharge from 1987 to 1988	(line 2c-1c) ÷ 1c	
4	Inflation for FY 88 hospital market basket component	DRI	
5	Is your proposed rate of increase less than or equal to the HMBC for the applicable year? <input type="checkbox"/> Yes or <input type="checkbox"/> No		