

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

Do Not Mark In this Box

FILED
1987 AUG 17 4 9 28
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 65
~~16-29B~~

CITE AUTHORITY: WV Code, § 16-29B-8

RULE TYPE: PROCEDURAL INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW _____

AMENDMENT TO AN EXISTING RULE: YES , NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: III

TITLE OF RULE BEING AMENDED: Procedural Rules For The Projecting Of
Gross Revenues For Hospitals, Setting The Amount Of Net Revenues Over
Expenditures For Hospitals And Setting Schedules Of Rates For Hospitals

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: _____

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS September 17, 1987


CHAIRMAN

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

FILED
1987 AUG 17 AM 9:29

Rule Title: Procedural Rule For Requests For Hospital Rate Changes

Type of Rule: Legislative Interpretive 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.

Date August 17, 1987

Signature of Agency Head or Authorized Representative

W. T. G. [Signature]

D

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. Health Care Facility Financial Disclosure Act
 9. Additional information
 10. Time periods
 11. Decisions and records available
 12. Compliance reports
 13. Severability

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

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SECRETARY OF STATE

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 - August 17, 1987.

1.4. Effective Date - September 17, 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

statement of policy by which the board makes its decisions in rate-setting matters and is filed as a Legislative Rule with the Secretary of State.

Section 3. Revenues paid by and rates set for federal medicare and medicaid programs.

Until such time as agreements are entered into by the board with the Secretary of the United States Department of Health and Human Services so that department and affected state agencies allow reimbursement to hospitals subject to the provisions of this Act in accordance with rates approved by the board for services provided for by that department, nothing in this rule shall be interpreted or construed so as to allow the board to affect revenues paid by or rates set for the Federal Medicare and Medicaid programs. Rather, until such agreements are entered into, the board shall set rates of payments only for other payors.

Section 4. Permanent changes in the schedule of rates

Except as provided for by section 5 of this rule, any hospital which wishes to change or amend any portion of its previously approved schedule of rates shall file an application and proposed budget as described below with the Authority. The hospital may prior to the filing of any rate increase application request a pre-application conference with the Authority's staff. The purpose of

the conference will be to discuss the information needed to justify the requested increase.

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

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or an interested party may request a hearing which request may, in the discretion of the board, be granted.

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

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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 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. Such notice shall not issue until twenty-four (24) hours after the final order is mailed to the hospital.

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

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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 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 and also at the offices of the board. Also, the legal advertisement shall advise the public that any person or entity who claims to be an interested party 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 parties' names, address and the facts relied upon to establish his or her interest. The legal advertisement must inform the public that interested

parties 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 parties 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 receipt by the hospital of the disputed order. A request for reconsideration shall toll the running of the period in which an appeal must be taken. The board shall respond to the request for reconsideration in writing and shall state its reasons for granting or denying the request.

Section 5. Automatic rate of inflation increases.

5.1. Any hospital which wishes to increase 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.

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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.

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 "hospital and related services" item of the Consumer Price Index for all urban consumers as reported by the United States Bureau of Labor Statistics for the hospital's immediately completed fiscal year. The hospital may request the Authority to provide it with

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this figure prior to filing the notice required by section 5.2 of this rule. The rate of inflation so reported shall not be adjusted for increasing costs of technology, increases in nonsupervisory wages, malpractice premiums, new services, or any other reason.

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. 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

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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 also applies 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 experiences less inpatient utilization for the twelve (12) months following the increase than it had anticipated when the automatic rate of inflation increase was obtained, the hospital's average rate per discharge shall not later be increased to make up for the decline in gross inpatient revenue without permission of the board.

5.9. For hospitals which have obtained an automatic rate of inflation increase, if the hospital actually experiences gross inpatient revenues per discharge for nonmedicare and nonmedicaid payors in excess of the amount it was allowed, then the hospital is notified 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.

Such liability will be determined by reference to those sections and not by these rules.

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

5.11. While the automatic rate of inflation increase will be calculated upon the actual average revenue per discharge for the hospital's past fiscal year, the board will continue to monitor the hospital's compliance with the board's prior orders. Should such monitoring reveal that the hospital exceeded its prior revenue limits, then the board will take corrective action against the hospital as a result of that excess and will also take corrective action against the rates being charged by the hospital after any automatic rate of inflation increase.

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 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.

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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 describe in detail the facts in support of the temporary rate change, 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 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.

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Series III, Sec. 6

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, a hospital, 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. Health Care Facility Financial Disclosure Act

Before any application for a rate increase, including requests for automatic rate of inflation increases, will be accepted for review, the hospital must be in compliance with the Health Care Facility Financial Disclosure Act, West Virginia Code, § 16-5F-1 et seq. Failure to be in such compliance shall cause the board to refuse to accept the application or request and to reject it.

Section 9. 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 10. Time periods

10.1. 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.

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

Section 11. - 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 12. Compliance reports

When there is reason to believe that a hospital is exceeding its revenue limits, 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.

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Series III, Sec. 13

Section 13. 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 _____

*Table
05.3.a*

**Instructions
For Proposed Increased 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 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 ÷ lines 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		



Arch A. Moore, Jr.
Governor

STATE OF WEST VIRGINIA
HEALTH CARE COST REVIEW AUTHORITY

FILED
AUG 17 1987
SECRETARY OF STATE

Walter J. Dale
Chairman

Board Members
Larry C. Fizer
Don M. Keesling

August 17, 1987

Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, WV 25305

Dear Mr. Hechler:

Re: Final Filing of "Procedural Rule For
Requests For Hospital Rate Changes"

Enclosed herewith please find the documents required for the filing of procedural rules. They are as follows:

- (1) Two copies of the approved rule.
- (2) Two copies of a fiscal note.
- (3) Two copies of a notice of agency adoption.
- (4) Two copies of the register of attendees at our public hearing.
- (5) Two copies of the written comments received.
- (6) Two copies of the transcript of the public hearing.
- (7) Two copies of the agency's responses to those written comments, our amendments to the proposed rule and the reasons for those amendments.
- (8) Two copies of the promulgation history abstract.

In addition, we issued the enclosed "New Release" to the Capitol Press Office and caused the enclosed "Legal Notice" to run in twenty (20) state newspapers. Copies of the affidavits of publication are also enclosed.

With much appreciation for your assistance in this matter, I remain

Very truly yours,

WALTER J. DALE

WJDJHK/jmh

Enclosures

**WV HEALTH CARE COST REVIEW AUTHORITY
MEETING REGISTRATION**

Date of Meeting: Monday, July 20, 1987

Nature of Meeting: HCCRA Board Meeting and Public Hearing on
1) Fee Sched. for CON Matters 2) Proc Rls for Regs for Hospital Rate Change

	Individual's Name:	Name of Organization:	Do you wish to speak? Y or N
1	W. H. Wood	WV Health Care Cost Review Authority	!
2	William L. Sheppard	Princeton Comm Hosp.	Yes
3	Allen T. Meadows	Princeton Comm Hosp	✓
4	Patricia Heron	Princeton General Hospital	
5	...	...
6	...	...
7	Irene Kealey	United Hospital Center	Yes
8	David Bailey	"	No
9	JACK CANFIELD	Charleston Area Medical Ctr.	Yes
10	Thomas J. Stevens	Stevens Resource Consulting	N
11	JAMES E. CRAIG	WVU MEDICAL CORP. MORGANTOWN	NO
12	Fou e J. Wright	London-Clark Mem. Hospital	No
13	Daphne Schreiber	CAMC	NO
14	...	...	No
15	Paul Nisquam	Consultant	NO
16	...	...	NO
17	...	Memorial Hospital	NO
18	Sally S. Roberts	WVHA	NO
19	...	...	...
20	W.R. ...	WVHA	NO
21	STEVE PICKETT	WVHA	YES
22	DAVID GAWALICK	WVHA	NO
23	GREG GRIFF	...	NO
24	Bert Banette	St. Francis Hospital	NO
25	...	...	...
26	...	...	...
27	...	...	...
28	Jim Martin	Broadway Hosp.	NO
29	Phil Bookman	CAMC / WVHA	NO
30	Ken Rutledge	WVHA	Yes

WV HEALTH CARE COST REVIEW AUTHORITY
MEETING REGISTRATION

Date of Meeting: 7-20-87

Nature of Meeting: _____

	Individual's Name:	Name of Organization:	Do you wish to speak? Y or N
31	Leonard Vaccarella	Helder Hosp. Inc	
32	Dennis Bickman	Peterson General Hospital	
33	DAVID GREENE	SOUTH CHARLESTON COMM	
34	Wm A. Chan	Jackson General	
35	LARRY ARNOLD	HEALTH DEPT.	N
36	Tom		
37			
38	Robyn Davis	Goodwin + Goodwin	
39	Allen Spelton	Eyes Ear Clinic	
40	Walter Lee	Eyes Ear Clinic	
41	David H. Legman	Calhoun General Hospital	
42	Evans A. Bell	Cabell Huntington Hospital	
43	Bill Jannige	" " "	
44	JOHN WARNICK	PRESTON MEMORIAL	
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WEST VIRGINIA HEALTH CARE COST REVIEW AUTHORITY

RECEIVED

1987 JUL 27 AM 11:08

HEALTH CARE COST REVIEW
AUTHORITY

IN RE: Board Meeting

Transcript of proceedings had at a formal board meeting held of the West Virginia Care Cost Review Authority on the 20th day of July, 1987, commencing at 2:04 p.m., at 100 Dee Drive, Charleston, Kanawha County, West Virginia.

APPEARANCES: WALTER DALE, Chairman
LARRY FIZER, Board Member
DONALD KEESLING, Board Member
JOHN KOZAK, General Counsel
ROBERT PARKER, Director. CON

PHYLLIS HAYNES EDENS
CERTIFIED COURT REPORTER
2135 KAY NEVA LANE
CHARLESTON, WEST VIRGINIA 25312
(304) 984-3531

I N D E X

Statements of:

William L. Sheppard	8	50
Irene Keeley	11	49
Jack Canfield	14	40
Steve Pickett	22	38
Ken Rutledge	25	28

Reporter's Certificate - 54

MR. DALE: I wonder if we might come to order. This is a formal board meeting of the Health Care Cost Review Authority. The time is 2:04.

Any old business to come before the Board?

MR. FIZER: Mr. Chairman, I move the approval of the minutes as they are printed and distributed in our notebook for the July meeting.

MR. KEESLING: I second that motion.

MR. DALE: All in favor say aye.

MR. FIZER: Aye.

MR. KEESLEY: Aye.

MR. DALE: Opposed?

(No response.)

MR. DALE: New business?

MR. KEESLING: Yes, Mr. Chairman. I would like to make a motion to retain Mr. Ralph Sullivan for the financial consultant here at the Authority for a period of ninety days.

MR. DALE: Actually what that is, that is a financial consultant on some serious matters we have before

us now, pending at this time so we would rather not discuss the matters.

MR. FIZER: I second the employment of Mr. Sullivan.

MR. DALE: All in favor say aye.

MR. KEESLING: Aye.

MR. DALE: Opposed?

(No response.)

MR. DALE: At this time I would like to turn the meeting over to our general counsel, John Kozak, and he will carry on.

MR. KOZAK: Thank you, Mr. Dale.

This will be the public hearing portion of the meeting today. There are two hearings scheduled, and just to lay the framework for what we are going to be doing is pursuant to Chapter 29-8 of West Virginia Code, which requires that before any state agency can adopt rules or regulations that a public hearing has to be held on them.

As you all know, we have two sets that were scheduled for public hearing today. One being a Fee Schedule for Certificate Of Need Matters, and the second,

the Procedural Rule for Requests for Hospital Rate Changes.

Under the Administrative Procedures Act the comments that are made can either be in writing or orally delivered or both. The time for today was set for the delivery of written comments as well as any oral comments that need to be made.

The rules require that we keep a list of everybody who is in attendance here today. That list has to be filed with the Secretary of State's Office, and also be kept here on file for the next five years. I have page 1 of that list. There is another copy of it outside there, and if there is anybody who has not signed this list, I request that you do sign it so that we can comply with the EPA.

Also, we are required to file a transcript of today's proceedings with the Secretary of State's Office on both sets of rules. So, accordingly we have a court reporter present today who will be making a transcript of the proceedings.

Because of that requirement the way we are going to proceed today is to do each of the sets of rules individually. I want to ask for your oral comments that

they be confined initially to the Fee Schedule rules, which will we will go through, and then come back to the rate review rules.

Also, I have to ask you that as you make you make your comments if you would come up to the chair up here in the front so that both the board members as well as the court reporter can hear anything that is said today and we can get it all down accurately.

Before starting I would like to give you some information on a change in the scheduling that was got for all of this. The rules that we are going to be taking comments on today, we had originally contemplated another board meeting on August the 4th so that the board could look at the changes that might come as a result of the comments that we receive today.

Due to the fact that our chief financial analyst is incapacitated at the moment, and also, because I am anticipating more extensive changes to the rules than I had originally thought, we are going to cancel that August 4th meeting and schedule an August 10th meeting for that purpose.

August 10th is also going to be the date for receipt of public comments such as we are doing today on the exemption rules that that hopefully by now you all have gotten copies of. Then the board meeting following that August 10th meeting for action upon the exemption rules has been scheduled for August 31. Both of those meetings are for 2:00 in this room on those two dates. So it's August 10 and August 31 that you need to remember. If you have any questions on that I will be happy to talk to about it after we are done here.

Looking at the fee schedule rules first the record should reflect that we have received the following written comments: a letter from Robert L. Harmon, the Administrator of Grant Memorial Hospital, dated July 17, 1987; a letter from Dennis P. Bridgeman, Interim Administrator of H.C.A. Putnam General Hospital, dated July 17, 1987; a letter from Arthur A. Maher, M-a-h-e-r, President and Chief Executive Officer of St. Joseph's Hospital, Parkersburg, also dated July 17; a letter from Evan J. Ray, Director of Planning, Appalachian Regional Health Care, dated July 15; a letter from Marie L. Dunn,

D-u-n-n, Director of Administrative Planning, Weirton Medical Center, dated July 10; and finally, a letter from Francis K. Gracey, Vice President of Clinical Services, Camden-Clark Memorial Hospital, dated July 15.

Going down the list of folks that signed in earlier today, the first one who indicated he would like to speak is William L. Sheppard.

MR. SHEPPARD: I am William L. Sheppard, Administrator of Princeton Community Hospital in Princeton, West Virginia.

Mr. Chairman, Board members, I appreciate the opportunity to appear before you today and make some brief comments.

My comments concern the acute care hospital section of the proposed rates. Specifically the section 4.4, which will be the millage assignment on the Certificate Of Need application.

What I would like to comment on, basically, is the fact that the hospitals, of course, are already assessed a fee. In my case this year it is about 36,000 to support the operations of the Authority.

It is my understanding that that is the maximum millage on the assignment. So if you add it up for the entire state it is roughly a million and a half of income then to support the Authority. The level of budget that the legislature approved, as I understand, is approximately one point one million. So you would be getting, in effect, more revenue from hospitals to support the Authority than you are authorized to spend.

The other point I would like to make is in regard to the small hospitals. We have a lot of hospitals in the state, as you are aware, that are under 100 beds. A lot of which are getting in somewhat a financial bind already with the assessment.

What I would recommend then, therefore, that the hospitals that are under 100 beds be included in the small hospital division or section 3, 3.1, which would have a fee then for a ceiling of \$25.

I would also like to recommend that the section 4.4 be extended out another point. In other words the assessment would be .018. I will give you an example in our case: we have a letter of intent to build a free

standing surgery center, a little over three million dollars. Our fee with that assessment would be sixty-some hundred dollars. So if you extended it out a point that means I will be paying a fee of approximately six hundred and thirty dollars instead of sixty-three hundred.

It is my understanding that the Authority is wanting to generate approximately a hundred and forty thousand. I think by adding a point to this, I would certainly do that with the number of applications pending.

If you apply the .2 percent just to the Plateau application for the psychiatry facility in Beckley, their fee would be seventy thousand dollars. So I think the future hospitals then should be given a greater break because we will already be funding a million and a half in assessed fees.

That is my comments. Thank you for the opportunity.

MR. KOZAK: Thank you, Mr. Sheppard.

For those late arrivals I will just repeat that there is a sign in sheet outside the door there that we need to have signed by everybody in attendance today

so that we can comply with the Administrative Procedures Act requirements. I will ask you to sign that, please.

Next on the list is Irene Keeley.

MS. KEELEY: Good afternoon, and thank you very much.

I am Irene Keeley, and I am here today as an attorney representing United Hospital Center for the purposes of making comments on the proposed legislative rules, the fee schedules for CON matters.

United Hospital Center objects, as you might guess, to the proposal to impose a fee schedule on acute care facilities which seek CON or related rulings.

The basis for this objection is several fold. First, in the calendar year of 1987-88, it is United Hospital Center's understanding that the assessment imposed upon acute care facilities will generate more than the budget proposed for HCCRA and approved by the legislature for the current year.

UHC, therefore, believes that the imposition of additional fees for the processing of Certificate Of Need applications, notices in lieu of an

application, exemptions determination requests, or requests for declaratory rulings represents an onerous burden on community institutions that are already bearing the brunt of the operating expenses of the agency that regulates them. Put succinctly, it appears to be double taxation for the privilege of being regulated.

We are cognizant of the fact that the legislature has indicated that HCCRA has the discretionary power to assess the fees. But as HCCRA considers assessing these fees United Hospital Center asks that it recall that the legislative intent was not to tax the hospitals that are similar to other health care facilities, and if you do impose this fee burden it should be done at a minimum level and a cap should be imposed on projects which will, by virtue of their importance and expense, come before HCCRA at a level of cost beyond that proposed by other facilities.

I am concerned in particular with regard to replacement of equipment where you might have a facility that is replacing a piece of equipment or a procedures room in excessive of two or three million dollars. If you are going to impose a fee at the rate of

the expense itself, I'm not sure and the hospital is not sure that that bears any rational relationship to the purpose for which the fee was created by the legislature.

We are also concerned about the fact that the regulations are unclear in their definitional sense. We are not sure what kinds of activities will be covered. Over the course of HCCRA's history United Hospital Center has diligently attempted to bring matters before HCCRA that might not be covered by this agency's authority simply for purposes of making sure that the Authority is always aware of what was going on, and making sure that at all times both parties understood what the drill would be.

In this case we are now concerned that an event or an opportunity for development, which was clearly viewed by the hospital to be not covered could later be ruled covered by the Authority and it would have been inadequate notice to the hospital, which would then be subject to the punitive penalties that are included in these regulations.

The regulations do not specify that the penalties will only be imposed if it is demonstrated that

the hospital intended to avoid the fee requirement. As it stands now, just the fact of avoiding the fee requirement because something was considered to be outside the purview of the statute and the regulations would incur the penalty provision.

We ask that you, please, review that and consider including an intent provision in the regulation.

In conclusion, United Hospital Center submits that the fee structure proposed for acute hospitals is inappropriate, but if you are going to impose it on the hospitals to do so at a minimal rate with a cap on it, and to include in the penalty provisions a requirement for intent before the penalties will be imposed.

Thank you.

MR. KOZAK: Thank you.

Jack Canfield.

MR. CANFIELD: Thank you, Mr. Kozak.

Mr. Chairman, members of the Authority,
I am Jack Canfield, Senior Vice President for Corporate
Development of Charleston Area Medical Center.

Along with a lot of you I had the opportunity on July 9th to attend a seminar here in Charleston that was co-sponsored by the West Virginia Hospital Association and the Authority. I want to commend the Authority for its active participation in that seminar.

Mr. Chairman, I hope you will repeat such events. It certainly was helpful and worthwhile for us from this side of the table.

At that meeting Mr. Kozak made several requests on behalf of HCCRA that hospitals respond to these drafted rules and regulations, which are being proposed as a result of the passage of House Bill 2342. It is in response to that invitation that I come here today.

Mr. Chairman, I testify not just on behalf of my employer, Charleston Area Medical Center, but also on behalf of St. Francis Hospital and Highland Hospital. All had representatives at the seminar. All indicated the desire to respond to Mr. Kozak's invitation. All participated in the preparation of this testimony and concur in the points that I shall make this afternoon.

Hospitals in the Kanawha Valley employ

fifty-three hundred people on an annual basis with an annual payroll of ninety-three million. We treat fifty thousand inpatients annually. So we all have an interest in the impact of these regulations.

I would like to address first the proposal to charge fees for the filing of any application, the filing of any exemption, determination requests, or the filing of any request for a declaratory ruling. Let me be clear at the outset that we oppose the method of fee charging outlined in these regs.

I would like to begin with what I feel is a basic question. That is: Should there be a charge for making inquiries of a governmental agency?

When I was a commissioner with the Department of Employment Security, I daresay that members of my advisory counsel, and one of them is seated here at the table today, would have called me in for a serious chat had I gone about charging fees whenever a company asked whether it was covered or exempt by the law. So the general concept of charging a fee whenever a health care facility desires to know whether it is exempt from an application process or

when it has need to request a ruling it seems, at least to me as I read the regs, it would go against the concept of government agency providing public service.

Further, we would like to point out that the charging of fees is an option made available to the Authority. It is not a mandate. As I understand the history of that process, it was not the intention to require additional charges on top of the mandated assessments now levied on all hospitals in West Virginia.

Mr. Chairman, there is in law making, as you know, a very clear distinction between the use of the word shall and the use of the word may. This law says HCCRA may charge fees.

I also suggest that it is not inappropriate to examine very closely whether there is in fact a need for additional revenue. While the legislature appears to have given HCCRA an option, it is nonetheless a generally accepted practice of the Administrative Procedures Act to place the burden of substantiating a need for additional revenue on the respective government agency. This justification is to be provided in the fiscal note,

which accompanies the rules and regulations and which is filed, as you know, with the Secretary of State.

A review of the fiscal note, which HCCRA filed with the Secretary of State, is absent any discussion as to how this proposed fee rate structure or any projected revenues were determined. The fiscal note does say that one hundred and forty thousand dollars in revenue would be generated by the imposition of such fees, yet, there is no explanation as to how that figure was arrived at. In fact there has been a generally feeling that it is a pretty much of a guesstimate.

But if one were to go through the hypothetical exercise of going through HCCRA's annual report of 1986 and applying the fees that are proposed or envisioned in the draft of the rules and regs to the applications submitted in 1986, one would have raised three hundred and seventy-five thousand seven hundred and twenty-two dollars in that fiscal year.

That is just for applications alone. That does not even include revenue that would have come from fees assessed from exemption requests or for requests for

declaratory rulings or notices in lieu of applications. So conceivably using those figures from the annual report, when everything is factored in, you would be far more likely to raise half a million dollars than you would be to raise one hundred and forty thousand dollars.

If you break down the three hundred and seventy-five thousand I referred to earlier and you exclude from that calculation hospitals and equipment, at least as we calculate it, one still would have raised well over two hundred thousand dollars just from the "all others" categories.

Furthermore, reading the regulations literally, had these regulations been in effect in 1986 when you were considering the Kanawha Valley merger with Charleston Area Medical Center, when that application was submitted to the Authority the fee assessed would have been thirty thousand seven hundred and eighty dollars. That is above and beyond the two hundred thousand dollars the Charleston Area Medical Center is assessed annually.

In addition, as it has been pointed out by others, and I think, as was acknowledged during our

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discussion on July the 9th, there is no cap on such charges. At least there is a cap on the assessment.

As drafted as was also discussed at the seminar, the potential exists for fees being charged several times over on the same project unless there is some change made in that language. We received at the seminar some indication that that would be looked at.

We further question the need for additional revenue at a time when the legislature has provided a direct budget appropriation of over a million dollars to HCCRA. At a time when assessments imposed on the hospitals of our state are continuing, at a time when HCCRA ended its fiscal year with a surplus, and at a time when HCCRA will experience a reduction in its operating costs with the transfer of planning functions to the State Department of Health.

We would further observe that the fiscal note on one hand states that there will be no direct economic impact on the public. On the other hand it goes on to state that the cost of these fees will be passed on to consumers. That is an important distinction and a

consideration we hope the Authority will weigh carefully.

In short, Mr. Chairman, as I said, we would oppose the imposition of additional fees. We believe such an approach constitutes an unreasonable financial burden on medical institutions at a time when all are struggling in the face of governmental reimbursement cutbacks and declining patient census, but should you choose to exercise the option that is provided to you by the law, we suggest, at a minimum, that you examine some alternatives.

One would be to establish a rate structure for letters of intent, rather than for the purposes outlined in the proposed regulations. Last year alone one hundred and sixty-three letters of intent were filed with HCCRA.

As a CON requirement, letters of intent apply not just to hospitals, as is the case with the assessment, but to all entities under the jurisdiction of the CON program operated by HCCRA. When it comes to letters of intent everyone is on a level playing field, and by the time you file a letter of intent considerable thought and

study has been given to the viability of the project. So it constitutes more than a routine inquiry. So a fee accompanying letters of intent might be a more equitable method of raising revenue.

Another alternative would be to decrease the rate of the mandatory assessment on hospitals as you implement a new fee structure and to do so on a pro rata basis.

A third, and perhaps the most equitable of these alternatives, would be to acknowledge the fact that hospitals already are assessed but others are not, and for the first year charge all others certain fees and see what that produces.

I think it is difficult to argue with the reasonableness or fairness of at least looking at some of the alternative approaches.

Thank you, Mr. Chairman.

MR. KOZAK: Thank you, Mr. Canfield.

Steve Pickett.

MR. PICKETT: I am Steve Pickett, the Vice President of Finance at West Virginia University Hospital.

We appreciate the opportunity to come and speak with you today about these regs.

I think part of the problem that we are all facing is the backdrop or background that we have in health care today, particularly in this state, with many hospitals facing true financial difficulties. I think we are all painfully aware of the payment problems that the West Virginia Medicaid Program and the PEIB have at this particular point in time.

In addition, for many hospitals in the state indigent care is a significant problem. At WVU Hospital alone, we provided in excess of eighteen point two million dollars last year in uncompensated care.

We, too, are concerned that the proposed regs in their present form would add to the burdens hospitals face, both financially and administratively.

Our specific concerns on the CON fees relate primarily to what you have already heard; the cost... We went back and looked at what we did in 1986, and our fees would have totaled approximately thirty thousand for the

CONS that we filed, and so forth, in 1986. Our HCCRA assessment for this year is one hundred and twenty-six thousand dollars. For a total of one hundred and fifty-six thousand for WVU Hospital. If we convert that to an admission basis, just to cover that cost we will have to add eighteen dollars per admission.

Had the fee schedule been in place when we filed the CON for our new replacement hospital our fee would have been two hundred and twenty thousand dollars for that project alone. Now, obviously, that is a large project that doesn't come down the chute everyday, but I think it points out the real need if you are going to have a fee schedule to have a cap on those fees.

It also appears that such fees from hospitals are not needed, as you have already heard, in relation to the budget -- in HCCRA's own budget of approximately one point two million dollars. I would only add to that that of that amount our assessment of one hundred and twenty-six thousand dollars represents about ten percent of the entire HCCRA budget.

In addition, we believe the fees

associated with determining whether a project is reviewable should be deleted in their entirety. These fees, we believe, provide a disincentive for hospitals to interact with the Authority on CON questions.

In summary, we believe these fees are excessive and are not necessary from your own budget standpoint, and therefore, hospitals should be afforded the minimum fee of twenty-five dollars or no fee at all. However, we, too, if you choose to implement those fees have several additional suggestions.

Consideration should be given to a maximum fee on each CON or a cap, and also to a total amount of fees that any one institution may pay in a single year.

In addition, we think you should consider waiving the fees for hospitals who provide a significant amount of uncompensated care, as is done in other states.

Thank you.

MR. KOZAK: Thank you, Mr. Pickett.

Ken Rutledge, please.

MR. RUTLEDGE: Mr. Chairman, members of the

Board, I am going to be very brief. I have submitted a copy of my written comments.

I think that the point about the need for the fees has been fairly clearly made. The one comment I would like to make on that is: I feel very clearly that the intent behind the CON fee provision in the law was to more equitably distribute the cost of the CON process given the fact that the HCCRA funding to date has been solely by hospitals, and with the elimination of the federal funding it would have meant, indeed, hospitals were subsidizing the cost of the CON process for all other providers.

So I would merely indicate that I also agree that the question of whether or not there is even a need for a Certificate Of Need fee this year given the level of your appropriation and the amount that has been derived through assessments, that should be questioned. Certainly there should be some type of a limitation put on the total amount that could be received through fees. I think that clearly there is a need to have specific provisions made for hospitals in recognition of the fact that they already substantially support the operations of this agency.

In my testimony I have also listed a number of technical considerations that add a great deal of confusion as to when the fee would be covered, and whether or not you might end up having three different fees assessed for a single project; one when you first question the Authority regarding reviewability, secondly with a letter of intent, and finally with the application. Questions about what happens if it turns out through an audit that the size of the project was less than originally proposed, what would be the refunding mechanism, and so on.

The final thing that I would like to comment on is that given the, I think, the ambiguity of the Certificate Of Need statute and the lack of direction provided by the rules in defining what types of activities require notification or an exemption determination and the lack of consistency with which precedents or -- that has been set by HCCRA, the penalty provisions of section 6.3 would seem severe. Notably, no factors are listed which give hospitals and other health care providers notice of the factors that the agencies will utilize in determining if penalties will be imposed.

Thank you very much.

MR. KOZAK: Thank you.

That is the end of the list I have in front of me. Does anybody else wish to address the fee schedule rules?

(No response.)

MR. KOZAK: Not hearing any, we will go on to the second portion of today's schedule, which is the procedural rule for requests for hospital rate changes. Again, I have received a number of letters on that. One being a letter from Dennis P. Bridgeman, Interim Administrator, HCA, Putnam General Hospital, dated July 17, 1987; the second being the letter dated July 17, 1987, from Robert L. Harmon, Administrator, Grant Memorial Hospital; third being a letter from Delegate Bob Ashley, dated July 18, 1987; and the last being another letter from Arthur A. Maher, President and Chief Executive Officer at St. Joseph's Hospital, Parkersburg, that also being dated July 17, 1987.

Perhaps I will go in reverse order, and see if Mr. Rutledge would like to address the rate review?

MR. RUTLEDGE: I would be happy to.

Once again, Mr. Chairman, and members of the Committee, I appreciate the opportunity to provide comments on the proposed procedure rules for request for hospital rate changes.

Let me begin by addressing the issue of the trigger or inflation factor, because it is one of my major concerns about these proposed procedural rules.

I think that it is very clear that the West Virginia legislature through its House and Senate conferees agree to the principle that the hospitals should be allowed to increase their revenues at a rate consistent with the national hospital inflation rate.

In making that decision the conferees specifically rejected the HCCRA proposal to use the Data Resources, Inc. market basket measure. Instead, it specifically adopted the hospital industry's proposal, which was to use "hospital component of the Consumer Price Index."

The difference between these two indices is significant since the hospital component of the CPI currently averages about seven percent versus a DRI rate of about four percent.

The reference in the statute to inflation for the hospital industry, the CPI, and is published in the Bureau of Labor Statistics were included for the specific reason of making it clear that the legislature favored this higher level index.

Now I will agree that at some point in the drafting of the final conferee language, the word market basket, or the words market basket were inserted between hospital and component of the CPI, thus creating some confusion, and in fact defining an index which does not exist. However, jumping on that term market basket, it appears that HCCRA had used this as a justification to revert to the conferee rejected index as published by DRI.

Despite the inadvertent conclusion of the words market basket, there is no doubt that the legislature intended that revenue increases of less than the hospital component of the CPI be automatically approved by HCCRA. We feel that for HCCRA to do anything else would be to disregard legislative intent.

I know that there has been some confusion as to just exactly what this hospital component of

the CPI is. I know that during the period when the legislature was looking at and the conferees were looking at exactly what they were going to use, I did provide a copy of that index, as published by the American Hospital Association in its weekly Washington Memo Newsletter. Included in the attachments that I have provided for you with my testimony is a copy of the Consumer Price Index publication as published by the Bureau of Labor Statistics, which shows, I believe, the April and May hospital component of the CPI as published by that organization.

Let me tell you what is included in that. It includes, really, three parts, and this is also part of the attachment. There is the hospital room portion, there is the other inpatient hospital services portion, and there is the hospital outpatient services.

In sum, they are the hospital and related services component of the Consumer Price Index. They are published on a monthly basis, and they are a measure of inflation in the hospital industry. Inflation is defined as the increase in prices charged by hospitals rather than in the component utilized by hospitals, which is

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what DRI measures.

I have some other comments in our testimony regarding some of the shortcomings that we see in the DRI Index even as a measure of the increase in prices or services purchased by hospitals. Specifically one of those shortcomings is the fact that it does not measure changes in the cost of capital goods, secondly, that seventy-five percent of its wage base is made up by salaries outside of the hospital industry.

Moving on to just a couple of other provisions that we have some problem with and we have also included in some instances some suggested language changes. The first that I would mention is in subsection 4.4 where it indicates the staff of the Health Care Cost Review Authority will submit to the Board, "...a proposed gross revenue limit and gross patient revenue limit for that hospital..."

The problem that we have is that at no time is the hospital in question given an opportunity to comment upon the recommendations of the staff and action to the Board prior to the issuance of our interim order. It is a provision that allows that the staff may call for a

conference with the hospital, but no assurance that the hospital will have an opportunity to comment on those recommendations. The hospital is simply informed by the receipt of the interim order that information necessary to file a revised proposed budget and schedule rates shall be drafted in accordance with the revenue limit set in the interim order.

What we are suggesting is a change in language that would allow for the affected hospital to be informed of those recommendations and afford them an opportunity to comment on them, allowing then the Board to have that input in advance before making its decision.

Second area of comment in this subsection relates to announcements to the hospital's community of agency actions through the news media. What we are suggesting is that hospitals should be afforded the knowledge of actions by the agency prior to the news media. We are suggesting that at least a twenty-four hour advance knowledge period would be beneficial in allowing the hospital a brief opportunity to learn of the action taken by the agency and to prepare for any subsequent questions that

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may come from the news media.

Under subsection 4.8 on reconsiderations, it is agreed that a hospital should be required to state the grounds for the reconsideration. It is suggested, however, by us that the agency should likewise be required to clearly indicate its reasons for approving or denying a request for reconsideration of any disputed wording. Accordingly, we have suggested language that should be added to that subsection that would allow for the specific indication of why the agency chose either to accept the reconsideration or not to.

I have already covered section 5 dealing with the rate of inflation.

Section 5.8 dealing with outpatient or nonpatient revenues. Section 5.8 literally applied includes the ability of hospitals to adjust outpatient revenues and other nonoperating revenues based on the rate of inflation for hospitals nationally. Thus applied the proposed rule is beyond the intent of the statute. Nothing in this section of the statute precludes the hospital from adjusting outpatient rates, as well as inpatient rates, due to an

appropriate inflation indicator.

The operative language of this statute is: all requests for rate increases by hospitals and not referenced to inpatient revenues for discharge, thus the latter language is intended solely to initiate the change in rates and not to restrict such changes to inpatient activity.

I would like to point out that hospitals are required by federal regulation to conform to comparability of charges. That means that hospitals may not normally assign different charges for identical procedures performed on an outpatient basis than is charged on an inpatient basis. So we, therefore, suggest that subsection 5.8 be withdrawn in its entirety.

Subsection 5.9 of proposed procedural rule contains requirements which are clearly not in conformance with the statute and which are violative of the concept and philosophy, we feel, of the administrative rule making as well as the Administrative Procedures Act.

This subsection states that in the event that the hospital actually experiences gross inpatient

revenues for discharge for nonmedicare and nonmedicaid payers in excess of either the amount it had anticipated or an 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.

A primary purpose of administrative rule making by the Administrative Procedures Act is to clearly outline and provide notice to regulated parties of anticipated agency action. This section penalizes the hospital for an incorrect estimate. This estimate to be made by the hospital taking into account several forecasted factors, which are not capable of accurate projection.

These factors include case and payor mix, utilization levels, severity of illness, and unforeseen events. In spite of the difficulty of such forecast, subsection 5.9 of the proposed procedural rules then refers to criminal provisions of the West Virginia Code. We feel this was settled under West Virginia law that no procedural rule may be used to inflict penalties and criminal

provisions upon those entities regulated.

The second objection to this subsection is in addition to its punitive intent, the subsection does not articulate the criteria, which will be employed by the agency in determining when HCCRA will attempt to penalize the hospital, including refunds and temporary rate decreases or criminal penalties contained.

Finally, several instances have been brought to our attention in the past year in which the agency has proposed adverse action due to hospitals exceeding estimates and projections. To the extent that such hospitals in no way deliberately intended to knowingly violate a regulation, penalties and possibly criminal penalties we feel are fully out of place.

For the reasons I have listed we are also suggesting that subsection 5.9 be withdrawn in its entirety, and that it be redrafted in accordance with these comments and be formulated as a proposed legislative rule.

Once again, I appreciate the opportunity to make these comments today. Thank you very much.

MR. KOZAK: Thank you.

Steve Pickett again.

STEVE PICKETT: I would like to comment very briefly on the rate review section of the proposed rules.

I think to a great extent we have what started out as a very, very simple concept that is very difficult to put down on paper, maybe. The simple concept is that we believe the legislative intent was to allow for rate increases that match the national rate of inflation or the rate that consumers pay for health care. After all that is what HCCRA regulates, what consumers pay for health care.

We believe this concept is generally measured by the Consumer Price Index for medical care. Again, this represents the inflation rate or the rate that consumers pay. Our understanding of the proposed DRI inflation forecast is based on what hospitals pay for a certain market basket of goods.

This forecast excludes capital costs, which would certainly have to be recovered by hospitals.

One of their forecasts -- we are not exactly sure which one you are proposing to use -- excludes both capital and medical education costs, which would certainly greatly impact an institution such as ours. I think simply described the difference in these indexes is the difference between the concept of wholesale and retail.

Thus, we certainly support the use of the CPI measure, and we think it represents more the intent of the legislation and the conceptual on which HCCRA has operated and the review process itself has been going on for these number of years.

In addition, we would like to comment on section 5.8, which reads in part, "... this section is not available to any hospital which seeks to increase or decrease its outpatient revenue or its nonpatient revenue..."

To look at a simple example, if you read this literally, when I come to you and want to increase my inpatient lab tests, I have to increase my outpatient lab tests at the same time. I am required to do so by various regulations. So if I have a five dollar lab

test on an inpatient basis and I want to move that to five dollars and a quarter, I am also going to have to do the outpatient.

The literal interpretation of this particular provision would mean that I would be subject to a full rate review to make that request consistent on an outpatient basis. So, therefore, we suggest that this section 5.8 be deleted in its entirety or all hospitals will be subject to full rate review.

In addition, we believe that that lies in the face of the industries and HCCRA's only own encouragement of outpatient less expensive testing.

In summary, we think that the few suggestions that we have made, both orally and in writing, would both greatly reduce the burden of these proposed rules on both the hospital and HCCRA itself and follow it more closely with what we perceive as the legislative intent.

Thank you.

MR. KOZAK: Thank you, Mr. Pickett.

We are back to Mr. Canfield.

MR. CANFIELD: Thank you, Mr. Kozak, Mr.

Chairman, and members of the Authority.

I believe it is clear in reading House Bill 2342 that the legislature intends that hospitals be granted necessary rate increases without a complete review by HCCRA in those instances in which the rate would be less than the rate of inflation. But it is equally clear that the legislature specifically intended that the U. S. Bureau of Labor Statistics' Consumer Price Index be used to make that inflation rate determination.

If you look at the enrolled committee substitute on page 33, the language of the bill signed into the law by the governor says, "... the Board shall approve all requests for rate increases by hospitals where the rate of increase in the hospitals gross inpatient revenues per discharge for nonmedicare and nonmedicaid payers is equal to or less than the rate of inflation for the hospital industry nationally as measured by the most recent hospital market basket component of the Consumer Price Index as reported by the United States Bureau of Labor Statistics..."

That specific language, Mr. Chairman, was the end result of considerable debate in the

legislature. It has been referred to by others who were party to the conference committee.

I served a few years in the legislature and I have chaired a few conference committees and I know when the midnight hour comes down how wild and woolly it gets. But I daresay that had the legislature intended for the words Data Resources, Inc., to be in the law, it would be there.

Instead, the clear language in the law is the Consumer Price Index as prepared by the United States Bureau of Labor Statistics, so I think legislative intent should be very clear there. I would also point out that the CPI was selected because it reflects the buying habits of eighty percent of the noninstitutional population of the United States. It is the official government statistic. It is used to determine social security rates. It is used for entitlement programs. It is even used in labor management negotiations to set wage and hour standards.

So, with such specific language in the law it is troubling to read in section 5.5 that the use of an entirely different measurement of inflation is

anticipated, that of Data Resources, Inc., which is a consulting company which is not referenced in the law.

Without debating the merits of DRI it is, at least, our belief that the law is quite clear on this point, and we suggest that both the rules and the proposed instruction form, which was the document distributed at the seminar, which HCCRA cosponsored, should be amended -- changed to properly reflect the requirement of the state law.

I might add, Mr. Chairman, it is my understanding that there may also be a potential constitutional issue. Whenever a state attempts to delegate responsibility to a private entity. In several states courts have refused to permit such delegation arguing that standards must be established from official governmental data. In this case I would suggest that the CPI would meet that standard.

The next section we would like to address is section 5, and throughout section 5 -- there are several references: 5.1, .4, .6, .8, and .9 -- where reference is made to gross inpatient revenue per discharge.

We encourage the consistent use of this measure because it encourages hospitals to become more efficient by increasing the number of procedures per day, for example, thereby shortening lengths of stay. It allows the hospital flexibility in view of the tremendous fluctuation in a hospital's daily census. A hospital's census is somewhat seasonal, not unlike an unemployment rate. There are times of the year when you have more patients than you do in other times of the year, and if you were to establish a standard whereby you would be judging things on a per day basis, you are going to have a wide variance.

If HCCRA has any intention of calling you in on the carpet whenever you have a variance, that will take a full-time staff, because there are wide variances throughout a year. So the value of per discharge, we think, is real. It is a good measurement, and it was certainly recognized by the federal government in development of the DRG system.

We take exception here only to the reference in the calculation of compliance where -- that

handout again, which refers to hospital revenue per patient day. In this we would suggest that the regulations recognize only a revenue per discharge cap.

We have some additional concerns in 5.9. I believe Mr. Rutledge has already addressed those, so I won't repeat that but we have similar concerns as to some of the less than precise wording that read literally can be construed to mean that if the rate of inflation is set, for example, at seven percent and the hospital's rate of increase was only four percent, the hospital could be penalized even if it came in well under the seven percent.

We respectfully request that that present wording constitutes an unintentional catch 22, and probably can be clarified by Staff.

Another suggestion relates to definitions of the terms interested persons, interested party, and persons affected. There appears to be some inconsistency in the application of these terms throughout the regulations. We would encourage a clearer definition of these terms. Absent to that clearer definition, hospitals could be subjected to disruptions, delays, and escalated

costs at the whim of competitors or others.

We would also request that you specifically outline the documentation required of persons to participate in the process and to require a statement of the exact nature of the inquiry or action.

Again, I am repeating some of what others have said, but in the sections relating to hearings current language says HCCRA and interested parties are permitted to request a hearing. We recommend that hospitals be specifically listed as having the option to request a hearing as well.

We are all aware of the need for HCCRA to establish guidelines under the new law to follow when a rate is necessary. We know that certain information is needed by HCCRA on budgetary and other fiscal matters in order for an appropriate review to take place, and we want to provide that information.

There is one provision in section 4.1 which we feel goes beyond the information necessary for a fiscal review. I refer to the requirement for a specific statement of all assumptions relied upon in preparing the

budget of a hospital. That is a rather broad statement. We do not feel that providing all assumptions, some of which may be of a proprietary nature, about projects which have not yet been announced is an integral part of the fiscal review process.

On the other hand, I do want to stress that we are happy to respond to any specific questions you may have with regard to any budget we would submit.

We also understand your desire for the public to have access to information. However, we do not believe that the best procedure for access to this information is to permit any person so desiring to come into a hospital during a hospital's working hours and review that hospital's proposed budget application.

This would place an additional burden on hospitals to dedicate more staff to make available information, which is already public record at the HCCRA offices. In addition, if an individual, for example, were desirous of getting information on several hospitals, that person could be inconvenienced by having to travel to each.

Turning to the temporary rate increase

provision in section 6.1, we agree with the basic procedures for submitting an application to HCCRA. We do suggest some clean up language to eliminate confusion, which comes from this sentence: "... 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 and rates required to alleviate the situation and shall summarize the overall rate increase..."

Just to be quite honest with you, Mr. Chairman, we just don't know what that means. It just may be a drafting problem that can be addressed, corrected.

As with other rules and regulations, a fiscal note was required in this case. The work sheet filed with the Secretary of State does not include any additional costs or revenues as a result of the new rules. We suggest that there may indeed be a significant fiscal impact on hospitals as a result of increased notice filings and other required documentation.

We suggest that increased paper work, filing, and accompanying costs envisioned by these rules and regulations as presently drafted would actually increase the

work load and, therefore, the costs to hospitals.

In summary, Mr. Chairman, we appreciate the good effort put forth by the Authority to lay the foundation for Rules and regulations which take into account the views of the health care community. We hope for rules which are fair, equitable, and workable, and we stand ready to work with you in any way we can toward that end.

Thank you.

MR. KOZAK: Thank you, Mr. Canfield.

Ms. Keeley.

MS. KEELEY: Thank you for the opportunity to make some comments with regard to the proposed procedural rules concerning rates.

I do not intend speak at length. I believe everything that could be said has already been said, and I sit here only to reiterate United Hospital Center's concern with the proposed rules for hospital rate changes.

United Hospital Center believes those proposed rules are focused on HCCRA's use of the Data Resource market basket indicator, which is a measure specifically rejected by the legislative conferees during

the last legislative session.

The difference between the HCCRA proposed indicator and the CPI is a difference amounting to significant dollars. The effect of this would be detrimental to West Virginia's hospital industry. Moreover, since the legislature clearly favored the higher CPI Index, United Hospital Center submits that the use of the DRI as the measure violates the intent of the statute.

I would also add my voice to the concerns about the inclusion of the term hospital at regulation 5.10. Elsewhere, in the regulation, specifically at 4.2, and I think there are a couple of other sections, the regulations state the hospital or an interested party. Because of that inconsistency, I believe that at 5.10, it could be very easily construed that hospital is not included in that section. We would ask for consideration on that point.

Thank you.

MR. KOZAK: Thank you, Ms. Keeley.

Mr. Sheppard.

MR. SHEPPARD: Mr. Chairman, members of

the staff, I, too, would like to voice my objection to section 5.5 on the use of the Data Resources, Inc.

I think it is clearly not the word of the law, and clearly not the intent, at least, of the legislature and particularly the sessions that were in when the compromises were made.

I would like to comment on section 5.9. I have objections to this section mainly because of the penalties. I understand why hospitals would exceed either the CPI rate, that you have to reenter this case, obviously, and make a decision, and that is totally understandable. But you have to realize that this is a complicated basket made up of components that we do not have control over as a hospital administrator or as a hospital side of it.

Looking at our own particular case this past year -- our fiscal year ends June 30 -- we had an outside audit firm check us at mid-year, and we were well within the caps in all aspects, per day, per stay, et cetera. We get down now to year end and start doing our final year end audit and we find that we are suddenly exceeding the cap per stay. What happened to us?

We look at that and try to analyze it. As I say, it has many components that we have no control over. We successfully recruited an excellent neurosurgeon, but those cases are severe cases. Many times comatose and stay for a long period of time.

Several things have happened to us. Our acuity level has gone up. Our length of stay has gone up, which we really truly had no control over.

We look at physicians that under the gun from medicare, DRO checks, both from the length of stay and quality checks, et cetera. They have never been hauled in on premature discharge. They are going to start keeping their patients longer till everything is down to normal, temperature, et cetera, before they discharge you. This is what has happened to hospitals. As I say, we have no direct control over that.

So I think the language in 5.9 is severe for something that we may not necessarily be able to accurately predict on the year front end. Many things can happen to you in a year's time. That is exactly what has happened to us this year.

I object, mainly, there to the penalties and severity of that rather than the intent of sitting down with the hospital and analyzing what necessarily happened.

Thank you.

MR. KOZAK: Thank you, Mr. Sheppard.

Is there anybody else who wishes to address the procedural rules?

(No response.)

MR. KOZAK: There being nobody else I will declare the public hearing portion finished.

Mr. Chairman, I will return the meeting to your control.

MR. DALE: Is there anything else?

(No response.)

MR. DALE: At this time the Board is dismissed.

Thank you very much for coming.

(WHEREUPON, the board meeting was concluded at 3:05 p.m.)

REPORTER'S CERTIFICATE

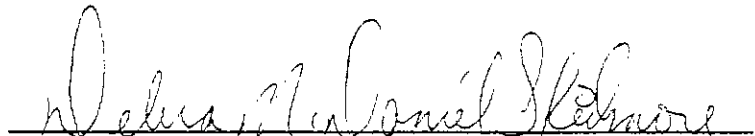
STATE OF WEST VIRGINIA,

HEALTH CARE COST REVIEW AUTHORITY, to-wit:

I, the undersigned, Debra McDaniel Skidmore, a Certified Court Reporter and Notary Public in and for the State of West Virginia, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings as set forth in the caption hereof, in a board meeting held on the 20th day of July, 1987.

Given under my hand this 26th day of July, 1987.

My Commission expires December 6, 1997.


Debra McDaniel Skidmore
Certified Court Reporter

Promulgation History Abstract

Rule Title: Procedural Rule For Requests For Hospital
Rate Changes

Rule Type: Procedural

Filed Notice of Public Hearing: June 15, 1987

Public Hearing Held: July 20, 1987

Final Rule Filed with Secretary of State: August 17, 1987

Effective Date: September 17, 1987


WALTER J. DALE
Chairman

Entered

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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statement of policy by which the board makes its decisions in rate-setting matters and is filed as a Legislative Rule with the Secretary of State.

Section 3. Revenues paid by and rates set for federal medicare and medicaid programs.

Until such time as agreements are entered into by the board with the Secretary of the United States Department of Health and Human Services so that department and affected state agencies allow reimbursement to hospitals subject to the provisions of this Act in accordance with rates approved by the board for services provided for by that department, nothing in this rule shall be interpreted or construed so as to allow the board to affect revenues paid by or rates set for the Federal Medicare and Medicaid programs. Rather, until such agreements are entered into, the board shall set rates of payments only for other payors.

Section 4. Permanent changes in the schedule of rates

Except as provided for by section 5 of this rule, any hospital which wishes to change or amend any portion of its previously approved schedule of rates shall file an application and proposed budget as described below with the Authority. The hospital may prior to the filing of any rate increase application request a pre-application conference with the Authority's staff. The purpose of

the conference will be to discuss the information needed to justify the requested increase.

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

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or an interested party may request a hearing which request may, in the discretion of the board, be granted.

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

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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 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. Such notice shall not issue until twenty-four (24) hours after the final order is mailed to the hospital.

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

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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 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 and also at the offices of the board. Also, the legal advertisement shall advise the public that any person or entity who claims to be an interested person party 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 parties' names, address and the facts relied upon to establish his or her interest. The legal advertisement must inform the public

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that interested persons parties 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 parties 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 receipt by the hospital of the disputed order. A request for reconsideration shall toll the running of the period in which an appeal must be taken. The board shall respond to the request for reconsideration in writing and shall state its reasons for granting or denying the request.

Section 5. Automatic 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.

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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.

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.~~ "hospital and related services" item of the Consumer Price Index for all urban consumers as reported by the

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United States Bureau of Labor Statistics for the hospital's immediately completed fiscal year. 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. The rate of inflation so reported shall not be adjusted for increasing costs of technology, increases in nonsupervisory wages, malpractice premiums, new services, or any other reason.

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. 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

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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~~ also applies 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 experiences less inpatient utilization for the twelve (12) months following the increase ~~is greater than what it actually experiences, than it had anticipated when the automatic rate of inflation increase was obtained,~~ the hospital's average rate per discharge shall not later be ~~greater than that anticipated at the time of the increase;~~ increased to make up for the decline in gross inpatient revenue without permission of the board.

5.9. ~~In the event that~~ For hospitals which have obtained an automatic rate of inflation increase, if 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,~~ was allowed, then the hospital is ~~informed~~ notified that it may be subject to all

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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. Such liability will be determined by reference to those sections and not by these rules.

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

5.11. While the automatic rate of inflation increase will be calculated upon the actual average revenue per discharge for the hospital's past fiscal year, the board will continue to monitor the hospital's compliance with the board's prior orders. Should such monitoring reveal that the hospital exceeded its prior revenue limits, then the board will take corrective action against the hospital as a result of that excess and will also take corrective action against the rates being charged by the hospital after any automatic rate of inflation increase.

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

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sixteen, Series II (1983), were drafted to implement Section 4 of the Act and to 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~~ describe in detail 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

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reconsideration may be requested by the hospital or an interested party pursuant 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

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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, a hospital, 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

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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. Health Care Facility Financial Disclosure Act

Before any application for a rate increase, including requests for automatic rate of inflation increases, will be accepted for review, the hospital must be in compliance with the Health Care Facility Financial Disclosure Act, West Virginia Code, § 16-5F-1 et seq. Failure to be in such compliance shall cause the board to refuse to accept the application or request and to reject it.

Section § 9. 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 § 10. Time periods

§ 10.1. 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

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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.

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

Section ~~10~~ 11. 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~~ 12. Compliance reports

When there is reason to believe that a hospital is exceeding its revenue limits, ~~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.

HCCRA
Pro. Rule, 16-29B
Series III, Sec. 13

Section ~~12~~ 13. 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.

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. Health Care Facility Financial Disclosure Act
 - ~~9~~ 9. Additional information
 - ~~9~~ 10. Time periods
 - ~~10~~ 11. Decisions and records available
 - ~~11~~ 12. Compliance reports
 - ~~12~~ 13. Severability

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	$\frac{CPI}{BR\%}$	
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		

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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statement of policy by which the board makes its decisions in rate-setting matters and is filed as a Legislative Rule with the Secretary of State.

Section 3. Revenues paid by and rates set for federal medicare and medicaid programs.

Until such time as agreements are entered into by the board with the Secretary of the United States Department of Health and Human Services so that department and affected state agencies allow reimbursement to hospitals subject to the provisions of this Act in accordance with rates approved by the board for services provided for by that department, nothing in this rule shall be interpreted or construed so as to allow the board to affect revenues paid by or rates set for the Federal Medicare and Medicaid programs. Rather, until such agreements are entered into, the board shall set rates of payments only for other payors.

Section 4. Permanent changes in the schedule of rates

Except as provided for by section 5 of this rule, any hospital which wishes to change or amend any portion of its previously approved schedule of rates shall file an application and proposed budget as described below with the Authority. The hospital may prior to the filing of any rate increase application request a pre-application conference with the Authority's staff. The purpose of

the conference will be to discuss the information needed to justify the requested increase.

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

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or an interested party may request a hearing which request may, in the discretion of the board, be granted.

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

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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 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. Such notice shall not issue until twenty-four (24) hours after the final order is mailed to the hospital.

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

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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 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 and also at the offices of the board. Also, the legal advertisement shall advise the public that any person or entity who claims to be an interested person party 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 parties' names, address and the facts relied upon to establish his or her interest. The legal advertisement must inform the public

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that interested persons parties 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 parties 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 receipt by the hospital of the disputed order. A request for reconsideration shall toll the running of the period in which an appeal must be taken. The board shall respond to the request for reconsideration in writing and shall state its reasons for granting or denying the request.

Section 5. Automatic 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.

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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.

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.~~ "hospital and related services" item of the Consumer Price Index for all urban consumers as reported by the

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United States Bureau of Labor Statistics for the hospital's immediately completed fiscal year. 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. The rate of inflation so reported shall not be adjusted for increasing costs of technology, increases in nonsupervisory wages, malpractice premiums, new services, or any other reason.

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. 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

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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~~ also applies 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 experiences less inpatient utilization for the twelve (12) months following the increase ~~is greater than what it actually experiences, than it had anticipated when the automatic rate of inflation increase was obtained,~~ the hospital's average rate per discharge shall not later be ~~greater than that anticipated at the time of the increase.~~ increased to make up for the decline in gross inpatient revenue without permission of the board.

5.9. ~~In the event that~~ For hospitals which have obtained an automatic rate of inflation increase, if 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,~~ was allowed, then the hospital is ~~informed~~ notified that it may be subject to all

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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. Such liability will be determined by reference to those sections and not by these rules.

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

5.11. While the automatic rate of inflation increase will be calculated upon the actual average revenue per discharge for the hospital's past fiscal year, the board will continue to monitor the hospital's compliance with the board's prior orders. Should such monitoring reveal that the hospital exceeded its prior revenue limits, then the board will take corrective action against the hospital as a result of that excess and will also take corrective action against the rates being charged by the hospital after any automatic rate of inflation increase.

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

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sixteen, Series II (1983), were drafted to implement Section 4 of the Act and to 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~~ describe in detail 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

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reconsideration may be requested by the hospital or an interested party pursuant 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

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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, a hospital, 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

HCCRA
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Series III, Sec. 7

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. Health Care Facility Financial Disclosure Act

Before any application for a rate increase, including requests for automatic rate of inflation increases, will be accepted for review, the hospital must be in compliance with the Health Care Facility Financial Disclosure Act, West Virginia Code, § 16-5F-1 et seq. Failure to be in such compliance shall cause the board to refuse to accept the application or request and to reject it.

Section 9. 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. 10. Time periods

§ 10.1. 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

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

Section ~~10~~ 11. 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~~ 12. Compliance reports

When there is reason to believe that a hospital is exceeding its revenue limits, ~~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.

HCCRA
Pro. Rule, 16-29B
Series III, Sec. 13

Section ~~12~~ 13. 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.

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

SERIES III

Title: PROCEDURAL RULE FOR REQUESTS
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 8. Health Care Facility Financial Disclosure Act
 9. Additional information
 10. Time periods
 11. Decisions and records available
 12. Compliance reports
 13. Severability

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	$\frac{CPI}{BR}$	
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		

NEWS RELEASE

June 15, 1987

Walter J. Dale, Chairman, West Virginia Health Care Cost Review Authority, announced today that the Authority had begun the process for adopting new procedural rules for the Certificate of Need Program and the Hospital Rate Review Program. The rules are required by the 1987 amendments adopted by the Legislature. The rules for the Certificate of Need Program set a fee schedule for use when persons or companies file applications and notices for certificate of need approvals relating to changes in services or expenditures by health care facilities. The hospital rate review rules relate to the procedures used when a hospital requests permission to change its rate schedule. The rules address the newly adopted emergency increases which the Legislature permitted as well as the automatic increases mandated to be allowed when a hospital seeks to increase certain rates at or below the levels of inflation in the national hospital industry.

A public hearing will be held on both sets of rules at the Authority's offices located at Suite 201, 100 Dee Drive, Charleston, West Virginia 25311. The public is invited to attend and to make oral or written comments on the rules. In lieu of attending, written comments may be mailed to the Authority's offices.

For copies of the rules or for further information, contact should be made with Samuel B. Folio, Executive Director, at the Authority's offices or by telephoning (304) 343-3701.



WALTER J. DALE
Chairman

CLASS I
LEGAL NOTICE

TO WHOM IT MAY CONCERN:

Walter J. Dale, Chairman, West Virginia Health Care Cost Review Authority, hereby gives notice pursuant to West Virginia Code, § 16-2D-8(b), § 16-29B-8, and § 29A-3-5, that the Health Care Cost Review Authority at its June 15, 1987, meeting promulgated proposed procedural rules for the Certificate of Need Program -- titled "Fee Schedule For Certificate of Need Matters" -- and for the rate review program -- titled "Procedural Rule For Requests For Hospital Rate Changes."

A public hearing for the receipt of oral and written comments on these rules will be held at 2:00 p.m., Monday, July 20, 1987, at the Authority's offices located at Suite 201, 100 Dee Drive, Charleston, West Virginia 25311. Comments may be mailed to the Authority in lieu of attending the public hearing. The comments must be received at the Authority's offices by July 20, 1987, to be included in the record.

For additional information, contact Samuel B. Folio, Executive Director, at the Authority's address or by telephoning (304) 343-3701.


WALTER J. DALE
Chairman

Affidavit of Publication

No. _____

STATE OF WEST VIRGINIA,

Kanawha County, to-wit:

I, Kim Tyler of the

Sunday Gazette-Mail Charleston Gazette, a daily Democratic newspaper Daily Mail, a daily Republican newspaper, published in the City of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of Procedural Rules

was duly published in said paper once a day for one successive day commencing with the issue of the 19th day of June, 19 87, and ending with the issue of the 19th day of June, 19 87, and was posted at the front door of the Court House of said Kanawha County, West Virginia, on the 22nd day of June, 1987

Dates Published: 6-19-87

Subscribed and sworn to before me this 19th day of June, 19 87

Jandra S. Miller
Notary Public of Kanawha County, West Virginia

My Commission expires October 28, 1991

Printer's Fee \$ 16.02

TO WHOM IT MAY CONCERN:
Walter J. Dale, Chairman, West Virginia Health Care Cost Review Authority, hereby gives notice pursuant to West Virginia Code, § 16-2D-8(b), § 16-29B-8, and § 29A-3-5, that the Health Care Cost Review Authority at its June 15, 1987, meeting promulgated procedural rules for the Certificate of Need Program—titled "Fee Schedule For Certificate of Need Matters"—and for the rate review program—titled "Procedural Rule For Requests For Hospital Rate Changes."

A public hearing for the receipt of oral and written comments on these rules will be held at 2:00 p.m., Monday, July 20, 1987, at the Authority's offices located at Suite 201, 100 Dea Drive, Charleston, West Virginia 25311. Comments may be mailed to the Authority in lieu of attending the public hearing. The comments must be received at the Authority's offices by July 20, 1987, to be included in the record.

For additional information, contact Samuel B. Folic, Executive Director, at the Authority's address or by telephoning (304) 343-3701.

WALTER J. DALE
Chairman

(1330)

ACCT-7

PUBLISHER'S CERTIFICATE

vs.

STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA

Classified
I, Mickey Carlock, Advertising Manager of THE

DOMINION-POST, a newspaper of general circulation published in
the City of Morgantown, County and State aforesaid, do hereby cer-
tify that the annexed

Promulgation of Proposed Procedural Rules

was published in the said DOMINION-POST once a week for
1 successive weeks, commencing on the 19 day
of June 87, 19 and ending on the 19 day of June
19 87

I also certify that the same was duly posted on the 19 day
of June 87, 19, at the front door of the Court House of said coun-
ty, as provided by law.

The publisher's fee for said publication is \$ 18.51

Given under my hand this 23 day of June, 19 87

Mickey Carlock (SEAL)
Advertising Manager of THE DOMINION-POST

Subscribed and sworn to before me this 23 day of June 87, 19

Walter J. Dale
Notary Public of Monongalia County, W.Va.

My commission expires on the 12 day of March 96, 19

0021886

June 19

TO WHOM IT MAY CONCERN:
Walter J. Dale, Chairman, West Virginia Health Care
Cost Review Authority, hereby gives notice pursuant to
West Virginia Code § 16-2D-3(b), § 16-29B-3, and §29A-3-5,
that the Health Care Cost Review Authority at its June
15, 1987, meeting promulgated proposed procedural rules
for the Certificate of Need Program titled 'Fee Sched-
ule For Certificate of Need Matters'-and for the rate
review program- titled 'Procedural Rule For Requests
For Hospital Rate Changes.'
A public hearing for the receipt of oral and written
comments on these rules will be held at 2:00 p.m., Mon-
day July 20, 1987, at the Authority's offices located at
Suite 201, 100 Dee Drive, Charleston, West Virginia
25311. Comments may be mailed to the Authority in lieu
of attending the public hearing. The comments must be
received at the Authority's offices by July 20, 1987, to be
included in the record.
For additional information, contact Samuel B. Folic,
Executive Director, at the Authority's address or by
telephoning (304) 343-3701.

WALTER J. DALE
Chairman

OFFICIAL SEAL
NOTARY PUBLIC,
STATE OF WEST VIRGINIA
SHARON LYNN DOYLE
518 Sprindale Ave.
STAR CITY, W.VA. 26505
My Commission Expires March 12, 1996

MARCIA MOORE

being first duly sworn, says that the

fee schedule for certificate

RECEIVED
1987 JUN 23 AM 11:45
HEALTH CARE COST REVIEW
AUTHORITY

hereto attached was printed in the Parkersburg News

a daily newspaper published in the City of Parkersburg, Wood County, West Virginia, and posted

at the front door of the Court House for one

successive weeks, the first publication and posting thereon being on

the 19th day of JUNE 19 87, and subse-

quent publication on the day of 19

the day of 19, the day of

19, the day of

19, and the day of 19.

Printer's Fee \$ 13.00

208 words @ .0625

marcia moore
19th

Subscribed and sworn to before me this day of

JUNE 19 87

[Signature]
Notary Public for Wood County, West Virginia

My commission expires 7-21-92

LEGAL NOTICE
TO WHOM IT MAY CONCERN:
Walter J. Dale, Chairman, West Virginia Health Care Cost Review Authority, hereby gives notice pursuant to West Virginia Code, 16-2D-8(b), 16-29B-3, and 29A-3-5, that the Health Care Cost Review Authority at its June 15, 1987, meeting promulgated proposed procedural rules for the Certificate of Need Program - titled "Fee Schedule For Certificate Of Need Matters" - and for the rate review program - titled "Procedural Rule For Requests For Hospital Rate Changes." A public hearing for the receipt of oral and written comments on these rules will be held at 2:00 p.m., Monday, July 20, 1987, at the Authority's offices located at Suite 201, 100 Dee Drive, Charleston, West Virginia 25311. Comments may be mailed to the Authority in lieu of attending the public hearing. The comments must be received at the Authority's offices by July 20, 1987, to be included in the record.
For additional information, contact Samuel B. Folio, Executive Director, at the Authority's address or by telephoning (304) 342-3701.
WALTER J. DALE
Chairman

MARCIA MOORE
being first duly sworn, says that the
fee schedule for certificate of need
matters.

RECEIVED

1987 JUN 29 PM 3:30
HEALTH CARE COST REVIEW
AUTHORITY

hereto attached was printed in the Parkersburg News
a daily newspaper published
in the City of Parkersburg, Wood County, West Virginia, and posted
at the front door of the Court House for one
successive weeks, the first publication and posting thereon being on
the 25th day of JUNE, 1987, and subse-
quent publication on the day of 19
the day of 19, the day of
19, the day of
19, and the day of 19.

Printer's Fee \$ 13.00
208 words @ .0625
marcia moore

Subscribed and sworn to before me this 25th day of
JUNE 1987.

Walter J. Dale
Notary Public for Wood County, West Virginia
7-21-92

My commission expires

Parkersburg Printing Co.

LEGAL NOTICE

LEGAL NOTICE
TO WHOM IT MAY CONCERN:
Walter J. Dale, Chairman, West Virginia Health
Care Cost Review Authority, hereby gives notice
pursuant to West Virginia Code, S 16-2D-5(b), S 16-
29B-8, and S 29A-3-5, that the Health Care Cost
Review Authority at its June 15, 1987, meeting
promulgated proposed procedural rules for the
Certificate of Need Program - titled "Fee
Schedule For Certificate of Need Matters" - and
for the rate review program - titled "Procedural
Rule for Request For Hospital Rate Changes."
A public hearing for the receipt of oral and
written comments on these rules will be held at
2:00 p.m., Monday, July 20, 1987, at the Author-
ity's offices located at Suite 201, 100 Dee Drive
Charleston, West Virginia 25311. Comments may
be mailed to the Authority in lieu of attending the
public hearing. The comments must be received
at the Authority's offices by July 20, 1987, to be
included in the record.
For additional information, contact Samuel B.
Folio, Executive Director, at the Authority's
address or by telephoning (304) 343-3701.
WALTER J. DALE
Chairman June 25

LEGAL NOTICE
TO WHOM IT MAY CONCERN:
 Walter J. Dale, Chairman,
 West Virginia Health Care Cost
 Review Authority, hereby gives
 notice pursuant to West Virginia
 Code, 16-2D-8(b), 76-29B-8, and
 29A-3-5, that the Health Care
 Cost Review Authority at its
 June 15, 1987, meeting promul-
 gated proposed procedural rules
 for the Certificate of Need Pro-
 gram -- titled "Fee Schedule For
 Certificate of Need Matters" --
 and for the rate review program
 -- titled "Procedural Rule For
 Requests For Hospital Rate
 Changes."

A public hearing for the
 receipt of oral and written com-
 ments on these rules will be held
 at 2:00 p.m., Monday, July 20,
 1987, at the Authority's offices
 located at Suite 201, 100 Dee
 Drive, Charleston, West Virginia
 25311. Comments may be mailed
 to the Authority in lieu of attend-
 ing the public hearing. The com-
 ments must be received at the
 Authority's offices by July 20,
 1987, to be included in the
 record.

For additional information,
 contact Samuel B. Folio, Execu-
 tive Director, at the Authority's
 address or by telephoning (304)

243-3701.

WALTER J. DALE
 Chairman

6:19(11)

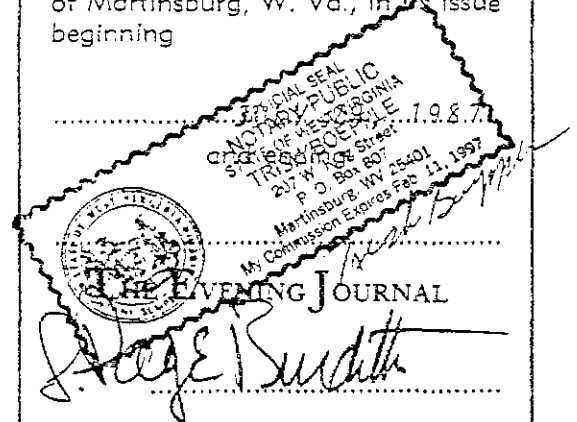
HEALTH CARE COST REVIEW
 AUTHORITY
 1987 JUN 23 AM 11:44
 RECEIVED

Certificate of Publication

This is to certify the annexed
 advertisement
WV Health Care Authority

Public Hearing July 20, 1987

appeared for 1 ^{day} consecutive ^{days} weeks
 in EVENING JOURNAL PUBLISHING CO.
 a newspaper published in the City
 of Martinsburg, W. Va., in its issue
 beginning



EVENING JOURNAL

Fee \$ 16.50

COPY

AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA,
COUNTY OF CABELL, TO-WIT:

NOTICE
CLASS I
LEGAL NOTICE

TO WHOM IT MAY CONCERN:

Walter J. Dale, Chairman, West Virginia Health Care Cost Review Authority, hereby gives notice pursuant to West Virginia Code, §16-2D-1(b), §16-29B-6, and §27A-3-5, that the Health Care Cost Review Authority at its June 15, 1987, meeting promulgated proposed procedural rules for the Certificate of Need Program - titled "Fee Schedule For Certificate of Need Matters" - and for the rate review program - titled "Procedural Rule For Requests For Hospital Rate Changes."

A public hearing for the receipt of oral and written comments on these rules will be held at 2:00 p.m., Monday, July 20, 1987, at the Authority's offices located at Suite 201, 100 Dec Drive, Charleston, West Virginia 25311. Comments may be mailed to the Authority in lieu of attending the public hearing. The comments must be received at the Authority's offices by July 20, 1987, to be included in the record.

For additional information, contact Samuel B. Folio, Executive Director, at the Authority's address or by telephoning (304) 343-3701.

WALTER J. DALE
Chairman

LH-900 6-19-87

I, Fay Lovejoy being first duly sworn, depose and say that I am Legal Clerk for Huntington Publishing Company, a corporation, who publishes at Huntington, Cabell County, West Virginia, the newspaper: The Herald-Dispatch, a independent newspaper, in the morning seven days each week, Monday through Sunday including New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving and Christmas; that I have been duly authorized by the Board of Directors of such corporation to execute this affidavit of publication for and on behalf of such corporation and the newspaper mentioned herein; that the legal advertisement attached in the left margin of this affidavit and made a part hereof and bearing number LH-900 was duly published in

The Herald-Dispatch

one time, ~~on one time~~ ~~on successive weeks~~ commencing with its issue of the 19th day of June, 1987, and ending with the issue of the 19th day of June, 1987, and was posted at the East door of Cabell County Courthouse

on the 19th day of June, 1987; that said legal advertisement was published on the following dates: June 19, 1987

; that the cost of publishing said annexed advertisement as aforesaid was \$11.75; that such newspaper in which such legal advertisement was published has been and is now published regularly, at least as frequently as once a week for at least fifty weeks during the calendar year as prescribed by its mailing permit, and has been so published in the municipality of Huntington, Cabell County, West Virginia, for at least one year immediately preceding the date on which the legal advertisement set forth herein was delivered to such newspaper for publication; that such newspaper is a newspaper of "general circulation" as defined in Article 3, Chapter 59, of the West Virginia Code, within the publication area or areas of the municipality of Huntington, Cabell and Wayne Counties, West Virginia, and _____

that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper on each date published consists of not less than four pages without a cover; and that it is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices.

Taken, subscribed and sworn to before me in my said county this 19th day of June, 1987
My commission expires 4-12-92

Fay Lovejoy
Notary Public
Cabell County,
West Virginia

RECEIVED
1987 JUN 22 AM 11:58
HEALTH CARE COST REVIEW
AUTHORITY

RECEIVED
1987 JUN 22 AM 11:57
HEALTH CARE COST REVIEW
AUTHORITY

I, Walter D. Jettick, publisher of
the NEWS-TRIBUNE, a daily
newspaper published at Keyser,
Mineral County, West Virginia,
hereby certify that the Proposed
Procedural Rules in the case
of Certificate of Need
Program

vs. _____

a copy whereof is hereto annexed has
been published for 1
consecutive day
in said NEWS-TRIBUNE, the first
publication being on the 19th
day of June, 1987.

Given under my hand at Keyser
this 19th day of
June, 1987.

Walter D. Jettick

Publisher

Publisher's Fee \$ 14.01

TO WHOM IT MAY CONCERN:

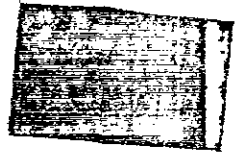
Walter J. Dale, Chairman, West
Virginia Health Care Cost Review
Authority, hereby gives notice pur-
suant to West Virginia Code, S
16-2D-8(b), S 16-29B-8, and ~~S 29A-3-5~~,
that the Health Care Cost Review
Authority at its June 15, 1987,
meeting promulgated proposed pro-
cedural rules for the Certificate of
Need Program - titled "Fee
Schedule For Certificate of Need
Matters" - and for the rate review
program - titled "Procedural Rule
For Requests For Hospital Rate
Charges."

A public hearing for the receipt of
oral and written comments on these
rules will be held at 2:00 p.m. Mon-
day, July 20, 1987, at the Authority's
offices located at Suite 201, 100 Dee
Drive, Charleston, West Virginia
25311. Comments may be mailed to
the Authority in lieu of attending the
public hearing. The comments must
be received at the Authority's offices
by July 20, 1987, to be included in the
record.

For additional information, con-
tact Samuel B. Folio, Executive
Director, at the Authority's address
or by telephoning (304) 343-3701.

WALTER J. DALE
Chairman

6:19



PUBLISHER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF HARRISON:

I, DEBORAH S. VELTRI

Classified Office Manager of THE CLARKSBURG EXPONENT,
a newspaper of general circulation published in the City of
Clarksburg, County and State aforesaid, do hereby certify that the
annexed

LEGAL NOTICE

LEGAL NOTICE
TO WHOM IT MAY CONCERN:

Walter J. Dale, Chairman, West Virginia Health Care Cost Review Authority, hereby gives notice pursuant to West Virginia Code, 16-20-8(b), 16-29B-8 and 29A-3-5, that the Health Care Cost Review Authority at its June 15, 1987, meeting promulgated proposed procedural rules for the Certificate of Need Program - title "Fee Schedule For Certificate of Need Matters" and for the rate review program - title "Procedural Rule For Request For Hospital Rate Changes."

A public hearing for the receipt of oral and written comments on these rules will be held at 2:00 p.m., Monday, July 20, 1987, at the Authority's offices located at Suite 201, 100 Dee Drive, Charleston, West Virginia 25311. Comments may be mailed to the Authority in lieu of attending the public hearing. The comments must be received at the Authority's offices by July 20, 1987, to be included in the record.

For additional information, contact Samuel B. Fowl, Executive Director, at the Authority's address or by telephoning (304) 343-3701.

WALTER J. DALE
CHAIRMAN
OVER J. BRIDGESON

was published in said THE CLARKSBURG EXPONENT one time,
on the 19th day of June 19 87

The publisher's fee for said publication is \$ 8.80

Deborah S. Veltri
Classified Office Mgr. of The Clarksburg Exponent



Subscribed and sworn to before me this 19th day
of June, 19 87

Jack J. Leonard
Notary Public in and for Harrison County, W. Va.

My commission expires on the 24th day of October
19 93

RECEIVED
1987 JUN 22 AM 11:58
HEALTH CARE COST REVIEW
AUTHORITY

State of West Virginia, County of Randolph, ss.



I, Charles R. Olson, Publisher of THE INTER-MOUNTAIN, a newspaper published at Elkins, in said county, do hereby certify that the annexed advertisement was published on the following dates:

TO WHOM IT MAY CONCERN:

Walter J. Dale, Chairman, West Virginia Health Care Cost Review Authority, hereby gives notice pursuant to West Virginia Code, 18-2D-8(b), 18-2D-9, and 29A-3-5, that the Health Care Cost Review Authority at its June 15, 1987, meeting promulgated proposed procedural rules for the Certificate of Need Program—titled "Fee Schedule For Certificate of Need Matters"—and for the rate review program—titled "Procedural Rule For Requests For Hospital Rate Changes."

A public hearing for the receipt of oral and written comments on these rules will be held at 2:00 p.m., Monday, July 20, 1987, at the Authority's offices located at Suite 201, 106 Dee Drive, Charleston, West Virginia 25311. Comments may be mailed to the Authority in lieu of attending the public hearing. The comments must be received at the Authority's offices by July 20, 1987, to be included in the record.

For additional information, contact Samuel B. Follo, Executive Director, at the Authority's address or by telephone (304)343-3701.

WALTER J. DALE
Chairman

June 19, 1987

1987 as required by law.

Given under my hand this 19 day of June, 1987
Charles R. Olson
Publisher

Printer's Fee: \$ 14.44

Subscribed and sworn to before me this 19 day of June, 1987.
Walter J. Dale
Notary Public

My Commission Expires the 24 day of August, 1994.

I, CELIA BAILEY Classified Manager of THE LOGAN BANNER, a newspaper in Logan County, West Virginia, do hereby certify that the annexed Notice was published in said newspaper for 1 successive times on the following dates .. June 19, 1987

Given under my hand this 24th day of June , 19 87

Celia Bailey Classified Manager

State of West Virginia)

County of Logan) to wit:

Subscribed and sworn to before me this 24th day of June , 19 87

My Commission expires June 6, 1993.

Kimberly Kay Lawson
Notary Public

TO WHOM IT MAY CONCERN: Walter J. Dale, Chairman, West Virginia Health Care Cost Review Authority, hereby gives notice pursuant to West Virginia Code, 16-2D-8(b), 16-29B-8, and 29A-3-5, that the Health Care Cost Review Authority at its June 15, 1987, meeting promulgated proposed procedural rules for the Certificate of Need program - titled "Fee Schedule For Certificate of Need Matters" - and for the rate review program - titled "Procedural Rule For Requests For Hospital Rate Changes." A public hearing for the receipt of oral and written comments on these rules will be held at 2:00 p.m. Monday, July 20, 1987, at the Authority's offices located at Suite 201, 100 Dee Drive, Charleston, West Virginia 25311. Comments may be mailed to the Authority in lieu of attending the public hearing. The comments must be received at the Authority's offices by July 29, 1987, to be included in the record. For additional information, contact Samuel B. Fojio, Executive Director, at the Authority's address or by telephoning (304) 343-3701. Walter J. Dale, Chairman

Affidavit of Publication

STATE OF WEST VIRGINIA,

MASON COUNTY, To-wit:

Personally appeared before the undersigned authority in and for the said County of Mason, this 19th day of June 1987, Clay Livingston, who being be me first duly sworn, did depose and say that he is an employee of The Register, a daily newspaper of general circulation, printed, published and circulated in said County; that the to whom it

may concern

hereto annexed, was published in said newspaper for 1 consecutive weeks, the first publication thereof having been made as aforesaid in the issue of 19th day of June, 1987 and the last issue of the _____ day of _____, 19_____

Clay Livingston

Taken, subscribed and sworn to before me in my said County, this 19th day of June, 1987.

Phyllis L. Roach Notary Public.
My commission expires May 25, 1993

Publication fee, \$ 1785

**CLASS I
LEGAL NOTICE
TO WHOM IT MAY
CONCERN**

Walter J. Dale, Chairman, West Virginia Health Care Cost Review Authority, hereby gives notice pursuant to West Virginia Code, § 16-2D-8(b), § 16-29B-8, and § 29A-3-5, that the Health Care Cost Review Authority at its June 15, 1987, meeting promulgated proposed procedural rules for the Certificate of Need Program - titled "Fee Schedule For Certificate of Need Matters" -- and for the rate review program -- titled "Procedural Rule For Requests For Hospital Rate Changes."

A public hearing for the receipt of oral and written comments on these rules will be held at 2:00 p.m., Monday, July 20, 1987, at the Authority's offices located at Suite 201, 100 Dee Drive, Charleston, West Virginia 25311.

For additional information, contact Samuel B. Folio, Executive Director, at the Authority's address or by telephoning (034)343-3701.

Walter J. Dale
Chairman

6-19-1t

RECEIVED
1987 JUN 22 AM 11:54
HEALTH CARE COST REVIEW
AUTHORITY

State of West Virginia, County of Upshur, ss:

..... Hunter Long, Advertising Manager
Record Delta, a newspaper published at Buckhannon in the said county, do hereby
certify that the annexed
.. Legal Notice for Procedural Rules for the Certificate
.. of Need and Rate Review Program
was published once a week for One (1) successive weeks in
said Record Delta newspaper published as aforesaid, commencing on the
.. 19th of June days of 19 .. 87

Given under his hand this ... 29th of June ... day of 19 .. 87

Hunter Long

..... Advertising Manager

Printers fee \$... 8.90

WEST VIRGINIA, UPSHUR COUNTY, TO-WIT:

Subscribed and sworn to before me this 29th day of June, day of 1987

Linda Snyder comm as Linda Colby, Notary Public.

My Commission expires February 21, 1989

CLASS I

LEGAL NOTICE

TO WHOM IT MAY CONCERN:

Walter J. Dale, Chairman, West Virginia Health Care Cost Review Authority, hereby gives notice pursuant to West Virginia Code, 16-2D-8(b), 16-29B-8 and 29A-3-5, that the Health Care Cost Review Authority at its June 13, 1987, meeting promulgated proposed procedural rules for the Certificate of Need Program -- titled "Fee Schedule For Certificate of Need Matters" -- and for the rate review program -- titled "Procedural Rule For Requests For Hospital Rate Changes."

A public hearing for the receipt of oral and written comments on these rules will be held at 2:00 p.m., Monday, July 20, 1987, at the Authority's offices located at Suite 201, 100 Dee Drive, Charleston, West Virginia 25311. Comments may be received at the Authority in lieu of a public hearing. The comments must be received at the Authority's offices by July 20, 1987, to be included in the record.

For additional information, contact Samuel S. Folio, Executive Director, at the Authority's address or by telephoning (304) 343-3701.

WALTER J. DALE
Chairman
6-19-87

AFFIDAVIT OF PUBLICATION

No. 1611

**State of West Virginia
County of Marion, to-wit:**

I, Joyce Ann Police, being first duly sworn upon my oath,

do depose and say that I am Legal Clerk of THE TIMES-WEST VIRGINIAN a corporation, publisher of the newspaper entitled THE TIMES-WEST VIRGINIAN an Independent newspaper;

that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily except Saturday and Sunday, for at least fifty weeks during the calendar year, in the Municipality of Fairmont, Marion County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforementioned municipality and Marion County; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matter, advertisements and other notices;

that the annexed notice of Notice was duly published in said newspaper once a week for one successive week (Class I), commencing with the issue of the 19 day of June 19 87, and ending with the issue of the 19 day of June 19 87, and was posted at the front door of the Marion County Court House on the 19 day of June 19 87; that said annexed notice was published on the following dates: June 19, 1987

and the cost of publishing said annexed notice as aforesaid was \$15.25

Taken, subscribed and sworn to before me in said county this 19 day of June 19 87

My commission expires Jan. 24, 1990

Joyce Ann Police
Notary Public for Marion County, West Virginia

CLASSIFIED LEGAL NOTICE
TO WHOM IT MAY CONCERN:
Walter J. Dale, Chairman, West Virginia Health Care Review Authority, 1620 S. 16th St., West Virginia, S.W. 26206-8100, and S.29A.3.5, that the Health Care Review Authority's June 15, 1987, proposed procedural rules for the Central of West Virginia Hospital, Inc., Schedule For Medical Care Review Program, attached hereto, be filed for the rate review of the Hospital's charges for Hospital Rate changes.
A public hearing for the receipt of oral and written comments on these rules will be held at 2:00 p.m. on Monday, July 20, 1987, at the Authority's offices located at Suite 201, 100 Dee Drive, Charleston, West Virginia 25311. Comments may be received by the Authority in the hearing. During the public hearing, the comments must be received at the Authority's office by July 20, 1987 to be included in the record. For additional information, contact Samuel B. Folio, Executive Director, at the Authority's address or by telephoning (304) 343-3701. Walter J. Dale, Chairman
July 19, 1987

CERTIFICATE OF PUBLICATION
 THE WEIRTON DAILY TIMES
 PUBLISHED BY
 THOMSON NEWSPAPER, INC.

LEGAL NOTICES
 TO WHOM IT MAY CONCERN: Walter J. Dale, Chairman, West Virginia Health Care Cost Review Authority, hereby gives notice pursuant to West Virginia Code, §§20-20-1(b), 16-20-3, and 20-2-5, that the Health Care Cost Review Authority at its June 15, 1987, meeting promulgated proposed procedural rules for the Certificate of Need Program - titled "Fee Schedule For Certificate of Need Matters" - and for the rate review program - titled "Procedural Rule For Requests For Monetary Rate Changes." A public hearing for the recital of oral and written comments on these rules will be held at 2:00 p.m., Monday, July 20, 1987, at the Authority's offices located at Suite 201, 100 One Drive, Charleston, West Virginia, 25311. Comments may be mailed to the Authority in lieu of attending the public hearing. The comments must be received at the Authority's offices by July 20, 1987, to be included in the record. For additional information, contact Samuel B. Foltz, Executive Director, at the Authority's address or by telephoning (204) 340-3700. WALTER J. DALE, Chairman 6-17-87

STATE OF WEST VIRGINIA
 COUNTY OF HANCOCK

I, Patricia Beatty, for the publisher of the WEIRTON DAILY TIMES, a newspaper in the CITY of Weirton, State of West Virginia, hereby certify that the annexed publication was inserted in said newspaper on the following dates:

..... June 19, 1987

commencing on the 19th day of June, 1987.

Given under my hand this 26th day of June, 1987.

Patricia Beatty

Sworn to and subscribed before me this 26th day of June, 1987.

Matthew Regan
 NOTARY PUBLIC

of, in and for HANCOCK COUNTY, WEST VIRGINIA
 My Commission expires

June 7, 1992

Certificate of Publication

Welch, W. Va. JUNE 22,, 19 87

Ordered by STATE OF WV
HEALTH CARE COST REVIEW AUTHORITY
. CHARLESTON, WV 25311

To publishing annexed NOTICE

. ONE Times \$ 16.25

I, D. H. Corcoran, Editor and Publisher of the Welch Daily News, a newspaper published at Welch, McDowell County, W. Va., do certify that the annexed notice was published in said paper for . . . ONE TIME

~~beginning~~ beginning on the 19TH . . . day of JUNE 19 . . 87 . . and ending on the . 19TH day of JUNE, 19 . . 87 . .

. *D. H. Corcoran*
Editor and Publisher

Superior-Welch XD7595-6

LEGAL NOTICE
TO WHOM IT MAY CONCERN:
Walter J. Dale, Chairman, West Virginia Health Care Cost Review Authority, hereby gives notice pursuant to West Virginia Code, 16-2D-1(b), 16-29B-6, and 29A-3-5, that the Health Care Cost Review Authority at its June 15, 1987, meeting promulgated proposed procedural rules for the Certificate of Need Program — titled "Fee Schedule For Certificate of Need Matters" — and for the rate review program — titled "Procedural Rule For Requests For Hospital Rate Changes."
A public hearing for the receipt of oral and written comments on these rules will be held at 2:00 p.m., Monday, July 20, 1987, at the Authority's offices located at Suite 205, 100 Dee Drive, Charleston, West Virginia 25311. Comments may be mailed to the Authority in lieu of attending the public hearing. The comments must be received at the Authority's offices by July 20, 1987, to be included in the record.
For additional information, contact Samuel B. Falio, Executive Director, at the Authority's address or by telephoning (304) 343-3701.
WALTER J. DALE
Chairman

THE West Virginia Daily News

P.O. Box 471
Lewisburg, WV 24901
Phone 645-1206

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HEALTH CARE COST REVIEW
AUTHORITY

Certificate Of Publication

STATE OF WEST VIRGINIA,

COUNTY OF GREENBRIER, ss:

I, Mary Balliett, one of

the Editors of THE WEST VIRGINIA DAILY NEWS, a daily newspaper of
general circulation published at Lewisburg, in the County of Greenbrier, State

of West Virginia, do certify that publication of the advertisement or ad-
vertisements attached hereto was made in June 19

issues of said newspaper, dated _____

June 19 1987

Given under my hand this 19 day of

June, 1987

Mary Balliett
Editor or Publisher

Subscribed and Sworn to before me this 16th day of _____, 1987

My commission expires Sept 11 1987
John C. [Signature]
Notary Public

LETTERS CONCERN
To whom it may concern:
Walter J. Dale, Chairman, West Virginia Health Care Cost Review Authority, hereby gives notice pursuant to West Virginia Code, 16-2D-3(b), 16-29B-6, and 29A-3-5, that the Health Care Cost Review Authority at its June 15, 1987, meeting, promulgated proposed procedural rules for the Certificate of Need program, titled "Fee Schedule For Certificate of Need Matters" and for the rate review program, titled "Procedural Rule for Hearings for Hospital Rate Change."
A public hearing for the receipt of oral and written comments on these rules will be held at 2:00 p.m., Monday, July 20, 1987, at the Authority's offices located at Suite 201, 100 Dee Drive, Charleston, West Virginia 25311. Comments may be mailed to the Authority in lieu of attending the public hearing. The comments must be received at the Authority's offices by July 20, 1987, to be included in the record.
For additional information, contact Samuel B. Folio, Executive Director, at the Authority's address or by telephoning (304) 343-3701.
Walter J. Dale
Chairman
(June 1987)

16.50

Publication Fee

AFFIDAVIT OF PUBLICATION
BECKLEY NEWSPAPERS INC.
BECKLEY, WEST VIRGINIA 25801

COPY OF PUBLICATION

June 19, 19 87

STATE OF WEST VIRGINIA,
 COUNTY OF RALEIGH, to wit:

I, Frank D. Wood being first duly sworn upon my oath, do depose and say that I am Director Of Sales of Beckley Newspapers Inc., a corporation, publisher of the newspaper entitled The Register/Herald, an independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily, for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of Legal Notice
 (Description of notice)

was duly published in said newspaper once a week for
one successive week (Class I), commencing
 with the issue of the 19th day of June
 19 87 and ending with the issue of the 19th day
 of June, 19 87 (and was posted at the _____

on the _____ day of _____ 19____); that said an-
 nexed notice was published on the following dates: _____
June 19th, 1987

and that the cost of publishing said annexed notice as aforesaid was
 \$ 12.80

Signed Frank D. Wood
 Frank D. Wood, Director Of Sales
 Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this
19th day of June, 19 87

My commission expires August 6, 1996

[Signature]
 Notary public of Raleigh County,
 West Virginia

R/H

LEGAL NOTICE
 TO WHOM IT MAY CONCERN:
 Walter J. Dale, Chairman, West Virginia Health Care Cost Review Authority, hereby gives notice pursuant to West Virginia Code, 516-2D-8(b), #16-298.8, and #29A-3-5, that the Health Care Cost Review Authority at its June 15, 1987, meeting promulgated proposed procedural rules for the Certificate of Need Program — titled "Fee Schedule For Certificate of Need Matters" — and for the rate review program — titled "Procedural Rule For Requests For Hospital Rate Changes."
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 For additional information, contact Samuel B. Folia, Executive Director, at the Authority's address or by telephoning (304)343-3701.
 WALTER J. DALE
 Chairman
 6-19-Fri-1-RH

AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA,
COUNTY OF MARSHALL, to wit:

I, Alleah Fahey, being first duly sworn upon my oath, do depose and say:
 — that I am Legal Advertising Manager of the MOUNDSVILLE DAILY ECHO, an Independent Democratic newspaper;
 — that I have been duly authorized by the publisher, Samuel Shaw, to execute this affidavit;
 — that such newspaper has been published for over 93 years, is regularly published afternoons daily except Sundays, for at least fifty weeks during the calendar year, in the municipality of Moundsville, Marshall county, West Virginia;
 — that such newspaper is a newspaper of "general circulation" as defined in Art. 3, Chap. 50 of the Code of West Virginia 1931 as amended, within Moundsville and Marshall county;
 — that such newspaper averages in length four or more pages, exclusive of any cover, per issue;
 — that such newspaper is circulated to the general public at a definite price or consideration;
 — that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices;
 — and that the annexed notice described as follows:

PARTY (ies) Walter J. Dale

NATURE (and agency if heard before one)

WV Health Care Cost Review Auth.
CERTIF-BILL TO

Ms. Terah Jacobs, Fiscal Officer
100 Dee Drive
Charleston, WV 25311

WAS PUBLISHED IN SAID NEWSPAPER AS FOLLOWS:

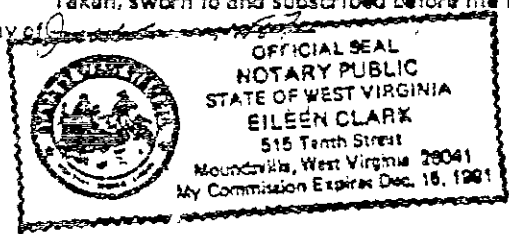
TIMES	DATES
1	June 19, 1987

By WORDS	OR By INCHES	PUBLICATION CHARGES
	6	\$12.72

(signed) Alleah Fahey

NOTARIZATION

Taken, sworn to and subscribed before me this 23 day of July, 1987



Eileen Clark
Notary public
Marshall Co.

—LEGAL NOTICE—
TO WHOM IT MAY CONCERN:

Walter J. Dale, Chairman, West Virginia Health Care Cost Review Authority, hereby gives notice pursuant to West Virginia Code, +16-2D-3(b), ;16-29B-8, and +29A-3-5, that the Health Care Cost Review Authority at its June 15, 1987, meeting promulgated proposed procedural rules for the Certificate of Need Program - titled "Fee Schedule For Certificate of Need Matters" - - and for the rate review program - - titled "Procedural Rule For Requests For Hospital Rate Changes."

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For additional information, contact Samuel B. Folio, Executive Director, at the Authority's address or by telephoning (304) 343-3701.

WALTER J. DALE
Chairman

PUBLISH: June 19, 1987.

LEGAL ADVERTISING RATES
(W.Va. official rate)

ONE TIME, per word 5c
TWO TIMES, per word 8.75cc
THREE TIMES, per word 12.5c

(Or, figured by space, according to official conversion table for regular Echo text type sizes):

ONE TIME, per inch, \$2.12
TWO TIMES, per inch, \$3.72
THREE TIMES, per inch \$4.68
FOUR TIMES, per inch \$5.95

If an ad is printed photographically in a size different from regular Echo text type, we will calculate inch measurement to equal the size ad would have taken if we had set it in our regular type.

When remitting payment, please either:
1—Enclose a duplicate of this certificate;
OR
2—Note on your check WHAT ad is being paid for, to be sure you get proper credit.

NOTICE
TO WHOM IT MAY CONCERN:
 Walter J. Dale, Chairman, West Virginia Health Care Cost Review Authority, hereby gives notice pursuant to West Virginia Code, Section 16-20-5(b), Section 26-2-28-5, and Section 29A-3-5, that the Health Care Cost Review Authority at its June 15, 1987, meeting promulgated proposed procedural rules for the Certificate of Need Program - titled "Fee Schedule For Certificate of Need Matters" - and for the rate review program - titled "Procedural Rule For Requests For Hospital Rate Changes."
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 For additional information, contact Samuel E. Folio, Executive Director, at the Authority's address or by telephoning (304) 343-3701.

WALTER J. DALE
 Chairman

Issued: June 19

STATE OF WEST VIRGINIA,
 COUNTY OF OHIO.

I, Linda Miller for the publisher of the

~~WHEELING NEWS REGISTER~~
 WHEELING INTELLIGENCER

newspapers published in the CITY OF

WHEELING, STATE OF WEST VIRGINIA, hereby certify that the annexed publication was inserted in said newspaper on the following dates:

June 19, 1987

commencing on the 19th day of June, 19 87

Given under my hand this 19th day of June, 19 87

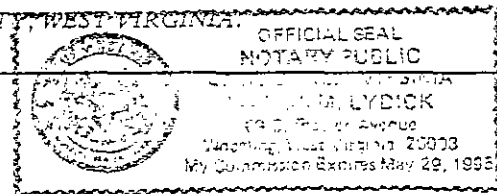
Linda Miller

Sworn to and subscribed before me this 19th day of June 19 87 at WHEELING, OHIO COUNTY, WEST VIRGINIA

Linda M Lydick
 Notary Public

of, in and for OHIO COUNTY, WEST VIRGINIA.

My Commission expires _____



CERTIFICATE OF PUBLICATION

State of West Virginia, }
County of Mercer. } To-wit:—

I, Charlotte Beckner of the Bluefield Daily Telegraph, a daily morning newspaper published in the City of Bluefield, Mercer County, West Virginia, do certify that the notice attached hereto under the caption;

was published in the said Bluefield Daily Telegraph
1 Times

on the following days, namely: June 19

in the year 1987

Publication Fee \$18.69

Charlotte Beckner

Subscribed and sworn to before me this 19th day of

June 1987

My Commission expires

Oct. 20 1995
Ruth J. Hopper
Notary Public

**LEGAL NOTICE
TO WHOM IT MAY CONCERN:**
Walter J. Dale, Chairman, West Virginia Health Care Cost Review Authority, hereby gives notice pursuant to West Virginia Code, §16-2D-8(b), §16-29B-8, and §29A-3-5, that the Health Care Cost Review Authority at its June 15, 1987, meeting promulgated proposed procedural rules for the Certificate of Need Program-titled "Fee Schedule for Certificate of Need Matters"-and for the rate review program-titled "Procedural Rule For Requests for Hospital Rate Changes."
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For additional information, contact Samuel B. Folic, Executive Director, at the Authority's address or by telephoning (304) 343-3701.
WALTER J. DALE, Chairman

511 50

1987 AUG 17 AM 3 31

HEALTH CARE COST REVIEW AUTHORITY

SECRET

PROPOSED FEE SCHEDULE FOR CERTIFICATE OF NEED MATTERS
AND REGULATIONS REGARDING HOSPITAL RATE CHANGES

PUBLIC HEARING
MONDAY, JULY 20, 1987

RESPONSE TO PROPOSAL

Testimony by

JACK CANFIELD
Senior Vice President for Corporate Development
Charleston Area Medical Center

on behalf of

Charleston Area Medical Center
Highland Hospital
St. Francis Hospital

Mr. Chairman, members of the Authority, ladies and gentlemen:

I am Jack Canfield, Senior Vice President for Corporate Development at Charleston Area Medical Center.

Along with others, I had the pleasure on July 9th of attending the seminar co-sponsored by the Authority and the West Virginia Hospital Association. I commend the Authority for its active participation in that seminar and hope such events will be repeated. It was helpful and worthwhile for all of us.

At that meeting, Mr. Kozak made several requests on behalf of HCCRA that hospitals respond to the drafted rules and regulations which are being proposed as a result of the passage of House Bill 2342. It is in response to that invitation that I come here today.

Mr. Chairman, I testify, not just on behalf of my employer, Charleston Area Medical Center, but also on behalf of Highland Hospital, and St. Francis Hospital. All had representatives at the seminar. All expressed a desire to respond to Mr. Kozak's invitation. All participated in the preparation of this testimony and concur in the points I shall make this afternoon. Hospitals in the Kanawha Valley employ 5300 people with an annual payroll of \$93 million and treat nearly 50,000 inpatients annually. We all have an interest in the impact of these

regulations on our respective healthcare institutions and people in the communities we serve.

I would like to address first the new proposal to charge fees "for the filing of any application, the filing of any exemption determination request, or the filing of any request for a declaratory ruling." And let me state at the outset that we oppose the method of fee-charging outlined in the proposed regulations.

I'd like to begin with what I feel is a basic question: should there be a charge for making inquiries of a governmental agency?

When I was Commissioner of the Department of Employment Security, I daresay members of my Advisory Council would have called me in for a serious chat had I gone about charging fees whenever a company asked whether it was covered by a law or was exempt from it. So this general concept of charging fees whenever a health care facility desires to know whether it is exempt from an application process, or when it has need to request a ruling, goes against the concept of a government agency providing public service.

Further, we would like to point out that charging fees is merely an option available to the Authority, not a mandate. It was not the intention to require additional charges on top of the mandated assessment now levied on all hospitals in West Virginia. Mr. Chairman, there is, in lawmaking, a very clear choice between use of the word "shall" and the use of the word

"may" in the writing of a law. This law, in I6-2D-5g, says HCCRA "may" charge fees.

I also suggest it is not inappropriate to examine very closely whether there is, in fact, a need for additional revenue.

While the Legislature appears to have given HCCRA an option, it is nonetheless a generally accepted practice of the Administrative Procedures Act to place the burden of substantiating a need for additional revenue on the respective government agency.

This justification is to be provided in Fiscal Notes which accompany proposed rules and regulations. A review of the fiscal note which HCCRA filed with the Secretary of State is absent any discussion as to how this proposed fee rate structure or any projected revenues were determined.

The fiscal note projects that \$140,000 in revenue would be generated by the imposition of such fees. Yet there is no explanation as to how that figure was arrived at, and, in fact, there has been a general admission that it's pretty much a "guesstimate."

But if one were to go through the hypothetical exercise of going to HCCRA's Annual Report, and applying the fees proposed against applications submitted in 1986, one would have generated \$375,722 in Fiscal Year 1986. And that's just for applications alone. It does not even include revenue that would have come from fees assessed for exemption requests, or for requests for declaratory rulings or notices in lieu of applications. So

conceivably, using HCCRA's own figures, you would be far more likely to raise half-a-million dollars than \$140,000. And if one breaks down that \$375,000, and excludes hospitals and equipment from fees, one still would have raised well over \$200,000 just from the "all others" applications.

Reading the regulations literally, had these regulations been in effect in 1986, the fee assessed CAMC when the Kanawha Valley merger application was submitted to the Authority would have been \$30,780 -- above and beyond the \$200,000 CAMC is already assessed annually for HCCRA operations. Furthermore, there is no cap on such charges. At least there is a cap in the assessment. And -- as drafted -- the potential exists for fees being charged several times over on the same project.

We further question the need for additional revenue at a time when the Legislature has provided a direct budget appropriation of over \$1 million to HCCRA, assessments imposed on the hospitals of our state are continuing, HCCRA ended its fiscal year with a surplus, and at a time when HCCRA will experience a reduction in its operating costs with the transfer of planning functions to the State Department of Health.

We would further observe that the fiscal note, on one hand, states there will be no direct economic impact on the public. But, on the other hand, it goes on to state that the cost of these fees will be passed on to consumers. That is an important fact, and one we hope the Authority will weigh carefully.

In short, Mr. Chairman, we oppose imposition of additional fees. We believe such an approach constitutes an unreasonable financial burden on medical institutions at a time when all are struggling in the face of governmental reimbursement cutbacks and declining patient census.

But if you should choose to exercise the option provided to you, we suggest, at a minimum, that you examine some alternatives.

One would be to establish a rate structure for letters of intent rather than for the purposes outlined in the proposed regulations. Last year alone, 163 letters of intent were filed with HCCRA. As a CON requirement, letters of intent apply not just to hospitals, as is the case with the mandatory assessment related to HCCRA's rate setting function, but to all entities under the jurisdiction of the CON program operated by HCCRA. When it comes to letters of intent, everyone is on a level playing field. By the time a letter of intent is filed, considerable thought and study has been given to a project. It constitutes more than a routine inquiry. So a fee accompanying letters of intent might be a more equitable method of raising revenue.

Another alternative would be to decrease the rate of the mandatory assessment on hospitals if you decide to implement the new fee structure, and to do so on a pro rata basis.

A third, and perhaps the most equitable of these alternatives, would be to acknowledge that hospitals already are assessed, but others are not. And, for the first year, charge

"all others" certain fees and see what that produces. It is difficult to argue with the reasonableness or fairness of that approach.

* * * * *

Next, Mr. Chairman, I would like to address the proposal entitled Procedural Rules for Requests for Hospital Rate Changes.

I first wish to address the section of the regulation dealing with the determination of the rate of inflation.

It is clear in reading House Bill 2342 that the Legislature intends that hospitals be granted necessary rate increases without a complete review by HCCRA in those instances in which the rate would be less than the rate of inflation. It is equally clear that the Legislature specifically intended that the U. S. Bureau of Labor Statistics' Consumer Price Index be used to make that inflation rate determination. On page 33 of Enrolled Committee Substitute for H. B. 2342, the bill signed by the Governor and now the law, the language reads:

"...the Board shall approve all requests for rate increases by hospitals where the rate of increase in the hospital's gross inpatient revenues per discharge for nonmedicare and monmedicaid payors is equal to or less than the rate of inflation for the hospital industry nationally as measured by the most recent hospital market basket component of the consumer price index as reported by the United States Bureau of Labor Statistics..." (emphasis supplied)

This specific language in the law was the end result of considerable debate in the Legislature and clearly demonstrates the designation of the Consumer Price Index. The Consumer Price Index was selected because it reflects the buying habits of 80% of the noninstitutional population of the United States. It is the official government statistic. It is the index used for social security benefits, for entitlement programs, even for wage and hour labor-management negotiations.

With such clear language in the law, it is troubling to read in Section 5.5 that the use of an entirely different measurement of inflation is anticipated, that of Data Resources Inc., a consulting company. Without debating the merits of the services of this firm, it should suffice to say it is not the United States Bureau of Labor Statistics. The law is quite clear on this point, and we suggest both the rules and the proposed "Instruction Form" distributed at the July 9th seminar be changed to properly reflect the requirement of the new state law.

There is also a potential constitutional issue whenever a state attempts to delegate responsibility to a private entity. In several states, the courts have refused to permit such delegation, arguing that standards must be established from official governmental data.

The next section we would like to address is Section 5 of the proposed regulations.

Throughout Section 5 (specifically Sections 5.1, 5.4, 5.6, 5.8 and 5.9) reference is made to gross inpatient revenue per discharge. We encourage the consistent use of this measure

because: (1) it encourages hospitals to become more efficient by increasing the number of procedures per day, thereby shortening lengths of stay; and (2) it allows the hospital flexibility in view of the tremendous fluctuation in a hospital's daily census. The value of a "per discharge" measurement was certainly recognized by the Federal government in its development of the DRG system.

We take exception here only to the reference in the "Calculation of Compliance" handout from the July seminar which refers to hospital revenue "per patient day." This, we suggest, is inconsistent with legislative intent. We strongly suggest that the regulations recognize only a revenue "per discharge" cap.

We have some additional concerns in Section 5.9. Here, we may have a matter of some less than precise wording. Read literally, if the rate of inflation is set at 7%, and a hospital's rate increase was only 4%, the hospital could be penalized if its gross patient revenue showed a 5% increase -- yet was still below the rate of inflation. On the other hand, if a hospital received an approved rate increase of 9%, it would automatically be in violation because it exceeded the 7% rate of inflation, and therefore would be penalized. The present wording constitutes an unintentional Catch 22 situation, and needs reworked.

Another suggestion relates to definition of the terms "interested persons," "interested party" and "persons affected." There appears to be an inconsistency in the

application of these terms throughout the regulations, and we encourage a clearer definition of these terms. Minus a clear definition, hospitals could be subjected to disruptions, delays and escalated costs at the whim of competitors or others. We also urge you to specifically outline the documentation required of persons to participate in the process and to require a statement of the exact nature of the inquiry or action.

As to Sections 5.10 and 6.6 relating to hearings, HCCRA and "an interested party" are permitted to request a hearing. We believe hospitals should be specifically listed as having the option to request a hearing as well.

We are all aware of the need for HCCRA to establish guidelines under the new law for the health care industry to follow when a rate change is necessary. We know that certain information is needed by HCCRA on budgetary and other fiscal matters for an appropriate review. And we want to provide appropriate information.

However, there is one provision in section 4.1 which we feel goes beyond the information necessary for a fiscal review. I refer to the requirement for a "specific statement of all assumptions relied upon in preparing the budget" of a hospital. We do not feel that providing all "assumptions" -- some of which may be of a proprietary nature about projects which have not yet been announced -- is an integral part of your fiscal review process, and recommend that this requirement be deleted. Certainly, we are happy to respond to any specific questions you may have with regard to the budget we submit.

We also understand your desire for the public to have access to information. However, we do not believe that the best procedure for access to this information is to permit any person so desiring to come into a hospital during the hospital's business hours and review a hospital's proposed budget application. This would place an additional burden on hospitals to dedicate additional staff to make available information which is already public record at HCCRA. In addition, an individual interested in obtaining information about several hospitals would be inconvenienced by having to travel to each hospital. It seems it would be much more practical to view or acquire records from one central repository, preferably the HCCRA office.

Turning to the temporary rate increase provision in Section 6.1, we agree with the basic procedures for submitting an application to HCCRA. We do suggest some cleanup language to eliminate confusion which comes from the sentence:

"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 the situation, and shall summarize the overall rate increase."

We simply don't know what that means.

Mr. Chairman, as with the other rules and regulations, a Fiscal Note was required in this case. The worksheet filed with the Secretary of State fails to include any additional costs or revenues as a result of the new rules. We suggest there may indeed be a significant fiscal impact on hospitals as a result of

increased notice filings and other required documentation. We would respectfully take issue with wording in the Fiscal Note which suggests that hospitals will have less work and less cost as a result of the new rules. The phrase in question suggests "this simplification should result in lesser costs to the state's acute care hospitals."

On the contrary, we suggest that the increased paperwork, filing and accompanying costs envisioned by the rules and regulations, as drafted, will actually increase the workload and costs to hospitals.

In summary, Mr. Chairman, we appreciate the good effort put forth by the Authority to lay the foundation for rules and regulations which have taken into account the views of the healthcare community. We hope for rules which are fair, equitable and workable. We stand ready to work with you in any way we can toward that end.

UNITED HOSPITAL CENTER COMMENTS ON PROPOSED LEGISLATIVE RULES

(Fee Schedule for CON Matters)

United Hospital Center ("UHC") objects to HCCRA's proposal to impose a fee schedule on acute care hospitals which seek CON or related rulings. As HCCRA is aware, hospitals presently are assessed the maximum amount allowable to support HCCRA. That amount for 1987-88 is 1.4 million dollars. UHC believes the imposition of additional fees for the processing of CON applications, notices in lieu of an application, exemption determination requests or requests for declaratory ruling represents an onerous burden on community institutions already bearing the cost of HCCRA's operation. Put succinctly, it is tantamount to double taxation for the privilege of being regulated. UHC objects to this and submits that acute care hospitals should be totally exempt from the imposition of these fees.

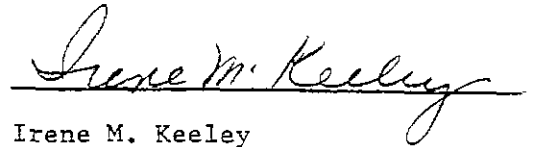
UHC is cognizant of the fact that, in the most recent legislative session, HCCRA was given discretionary power to assess hospitals on a fee basis. As HCCRA considers exercising this power, it should recall that the legislative intent was clear not to tax hospitals at a rate similar to other health care facilities. The fees proposed under these procedural rules for hospitals are, in UHC's opinion, clearly beyond HCCRA's limited legislative mandate. In the first place, these fees are not necessary to underwrite agency operations. With monies collected from the hospital assessment, HCCRA will be overbudget this fiscal year. Second, the legislature did not design the fee requirement as a mechanism to prevent access to the CON process. At the rates being suggested, however, it is obvious that access may be denied because many

important, and also expensive, projects could be taxed at such an oppressive and opened level. In UHC's opinion, if HCCRA intends to charge hospitals any fees at all, its fee schedule should be minimal and should contain a maximum cap.

UHC is also concerned about the type of activities covered by the fee schedule. During the four (4) years of HCCRA's existence, UHC has attempted to keep it fully informed of any activity which might have CON implications. The purpose of providing such information was not to burden or oppress the administrative staff; rather, it was to assure that all regulatory requirements would always be met. Is each such communications now subject to a \$450.00 fee? The regulations as presently drafted would indicate that such is the case. In its zeal to collect entry fees, will HCCRA now become a mere collection agency, devoting less administrative staff time to assuring the adequate provision of health care services to West Virginia's medically underserved population? UHC also objects to the implication in the regulations, as presently drafted, that all exempt activities must be so declared before a hospital may act. If a hospital proceeds with a project, which is later determined to have been subject to a fee, will HCCRA strictly impose the onerous penalty provisions of proposed regulations 6.1-6.3 without regard to whether the hospital intended to avoid the fee requirement?

In conclusion, the fee structure proposed for acute hospitals is inappropriate in its entirety. If fees are imposed, the rates should be reduced dramatically and definitions of covered activities clarified. If these changes do not occur, UHC submits that the breadth of the

proposed fee regulations is sufficiently burdensome to overwhelm both the hospitals and HCCRA in unnecessary and expensive minutiae.

A handwritten signature in cursive script, reading "Irene M. Keeley", is written over a horizontal line.

Irene M. Keeley

Attorney for United Hospital

Center

GRANT MEMORIAL HOSPITAL

P.O. BOX 1019
PETERSBURG, WV 26847
(304) 257 - 1026

ROBERT L. HARMAN
ADMINISTRATOR

JAMES PAUL GEARY
PRESIDENT

July 17, 1987

Walter J. Dale, Chairman
West Virginia Health Care Cost Review Authority
100 Dee Drive
Charleston, West Virginia 25311

Dear Mr. Dale:

I would like to as briefly as possible make a few comments concerning the Authority's Proposed Emergency Rules for Exemptions from Certificate of Need Review and the proposed Fee Schedule for Certificate of Need Matters.

On behalf of myself and other small hospitals in the state, I would like to state that I appreciate the Authority's recognition of the fact that the general operations of the Agency are funded through Hospital Assessments. However, I do not believe that the recognition of this fact has carried through into the Proposed Fee Schedule for CON Matters. A 10% reduction is rather insignificant considering the financial contributions that hospitals have already made. As you are well aware, none of the other Agencies, organizations or groups who have through choice or necessity utilized the CON Program during the past several years have contributed financially to its operation. Now is the time that the Hospitals' contribution should be recognized in the fee schedule and the other organizations begin to pay their fair share of the costs. I would think that it would be more fair at this point to make Certificate of Need Reviews available to Hospitals at the proposed rate for small profit entities as shown under Section 3 of the Proposed Fee Schedule.

At the very least, hospitals should be given credit for their individual assessments and this used as a "draw down" on any fees which may be assessed as a result of CON activity. This would particularly apply if the Proposed Fee Schedule was implemented; however, I still feel that to charge hospitals even at the Proposed "discount rate" is grossly unfair.

I am somewhat concerned about the lack of specificity in the Proposed Regulations that would permit the ordinary individual to determine what may be reviewable and those areas which are exempt from review. This may of necessity result in the need for additional consultation with the Authority which in turn may increase the cost to the Applicant.

July 17, 1987

If the Proposed Fee Schedule is implemented, will the fees collected be used to lower the assessments on Hospitals for the general operating expenses of the Authority? If so, this should be so stated.

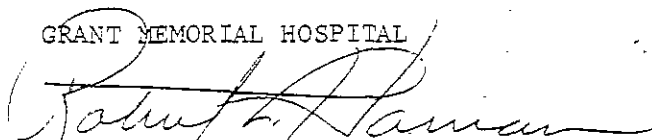
I am also concerned about the use of the market basket measure provided by Data Resources, Inc. as the indices against which proposed hospital rate changes for inflation would be measured. In my discussion with Legislators from this area, it did not appear to be their intent to use this unit of measure but rather to use the hospital component of the CPI.

I appreciate very much your consideration of the above comments.

With best wishes, I remain,

Sincerely yours,

GRANT MEMORIAL HOSPITAL



Robert L. Harman
Administrator

RLH:mlh

July 17, 1987

Walter J. Dale, Chairman
WV Health Care Cost Review Authority
100 Dee Drive, Suite 201
Charleston, WV 25311

Subject: Procedural Rule, 16-2D, Series X
Fee Schedule for Certificate of Need Matters

Dear Mr. Dale:

I wish to comment on the proposed fee schedule for certificate of need matters.

First, the general fee schedule proposed for requests for exemptions or declaratory rulings, notices in lieu of an application, and applications for CON approval, appear to be excessive at least with respect to the probable cost of processing any one of these items by the certificate of need program. With respect to the first two categories, the fees are set at levels which, intentionally or not, are prohibitive enough to discourage health care facilities or practitioners from notifying the HCCRA of activities which are likely to be nonreviewable or eligible for exemption. In the case of CON applications, while some sort of prorated fee for capital expenditures being submitted for CON approval seems appropriate, it also would seem appropriate to establish a minimum and maximum level for such fees. The costs involved in reviewing a 5, 10, or 30 million dollar project are not typically going to be significantly different.


Second, Section 4 establishes lesser fees for acute care hospitals. The discount offered, however, is minimal and does not reflect the fact that WV hospitals are already supporting the full HCCRA operation through annual assessments. In fact, those assessments have yet to be used in full. I think it can be argued that hospitals should either be charged some sort of a nominal fee not unlike the one proposed for small non-profit entities in Section 3, or should be given credit for any CON fees up to and including the amount of their annual assessment paid for HCCRA operations.

Walter J. Dale, Chairman
July 17, 1987
Page 2

Third, a definitions section ought to be included in order to discern which fees apply to which activity, or at least more specifically, which parts of 16-2D-4 are considered to be applicable to the fee for exemptions and requests for declaratory rulings and which parts are considered to be applicable to the fee for notices in lieu of an application.

Your consideration of these comments are greatly appreciated.

Sincerely,


Dennis P. Bridgeman
Interim Administrator

DPB:glt



ST. JOSEPH'S HOSPITAL

July 17, 1987

Honorable Walter J. Dale
Chairman
Health Care Cost Review Authority
100 Dee Drive
Charleston, WV 25311

Dear Mr. Dale:

The following comments on the proposed procedural rules for the Certificate of Need Program titled "Fee Schedule for Certificate of Need Matters" are submitted by St. Joseph's Hospital of Parkersburg for inclusion in the record of the Authority.

- 1) Payment of the fee should not be considered a capital expenditure in light of the ban on capital expenditures prior to the receipt of a Certificate of Need.
- 2) Given the HCCRA assessment currently required of acute care facilities, the proposed discounts to acute care facilities filing applications are inadequate.
- 3) The fees for notices in lieu of an application are too high with respect to the exemption fees and the application fees.
- 4) Are filing fees to be required from affected parties requesting a review of a Certificate of Need application?
- 5) Consideration should be given to exempting financially distressed facilities from the fee schedule, at least in those situations where the institution is in need of "lifesaving" measures.
- 6) A maximum fee should be established for the filing of an application for Certificate of Need approval. It is suggested that this maximum fee be \$5,000.00.

Thank you for your consideration of these comments.

Sincerely,

Arthur A. Maher
President & Chief Executive Officer

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

VHA
Partner-VHA Mid-Atlantic
Affiliate of the Voluntary
Hospitals of America System.



WEIRTON MEDICAL CENTER

601 COLLIERS WAY
WEIRTON, WEST VIRGINIA 26062-5091
304-797-6000

July 10, 1987

Mr. Walter J. Dale
Chairman
W. Va. Health Care Cost Review Authority
100 Dee Drive
Suite 201
Charleston, WV 25311

Dear Mr. Dale:

The following comments are in reference to the proposed procedural rules for the Certificate of Need Program titled "Fee Schedule For Certificate of Need Matters," and are submitted to be included in the public hearing on July 20, 1987.

We are cognizant of several states which have implemented fee schedules to the enhancement of Certificate of Need Programs. Although we concur with the intent of the fee schedule we strongly suggest:

1. (4.2) The fee of \$450 applied to requests for exemptions and declaratory rulings is excessive.
2. (4.4) Imposing a fee of 0.18% of a capital expenditure could be exorbitant. A maximum should be set in relation to the portion of the fee schedule. (Perhaps the example of Ohio's rule could be used as a guide, with a minimum fee of \$250 and a maximum fee not to exceed \$8,000.)
3. (4.4) The fee submitted should be deducted from the next regular assessment on hospitals paid to HCCRA so as not to impose a burden on those hospitals in their attempts to maintain quality services in the competitive health care industry.

Sincerely,

Marie F. Dunn
Director of Administrative Planning

MFD:ch



APPALACHIAN · REGIONAL · HEALTHCARE

ARH is a not-for-profit
multi-hospital
health care system

July 15, 1987

Kentucky

Corporate
Headquarters
(Lexington)

Harian ARH

Hazard ARH

McDowell ARH

Middlesboro ARH

Morgan County ARH

Whitesburg ARH

Williamson ARH

Central Laundry

Consolidated
Laboratory

Division of Home
Services

Homeplace Clinic

Family Health Services

June Buchanan
Primary Care Center

Virginia

Wise ARH

Clinchco Clinic

West Virginia

Beckley ARH

Man ARH

Matawan Clinic

Broadus Hospital
(Contract Managed)

ARH is an equal
opportunity employer

Mr. Samuel B. Folio
Executive Director
Health Care Cost Review Authority
100 Dee Drive
Charleston, West Virginia 25311

Re: Fee Schedule for CON Matters

Dear Mr. Folio:

The above referenced proposed procedural rule has been reviewed and the following comments are offered:

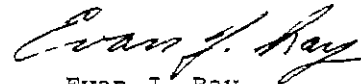
1. The proposed rule indicates that accommodation was made for the fact that the State's acute care hospitals fund the general operation of the agency through the assessments provided for by West Virginia Code §16-29B-8(c) in setting a fee schedule. However, under the proposed rule, hospitals will pay almost the same as other health care providers (excluding small non-profit entities). In our opinion, the proposed CON fees for acute care facilities appear to be too high.
2. We do not believe that a fee should be charged for requests for exemptions and declaratory rulings or for notices in lieu of applications.
3. The proposed rule does not set forth any conditions in which a fee would be refunded or apply toward another fee. We believe an application fee should be refunded if notice of withdrawal of the application is received within five (5) working days of the date the application is received. Also, provisions should be made which would allow the fee for request for exemption or other notice to apply toward the CON fee should a ruling be made requiring CON review.
4. The statute provides that the fees charged may vary according to the capital expenditure involved. The proposed rule establishes a fee which is a constant percentage of the proposed capital expenditure. A fee schedule similar to the following would be more reasonable. (The following is the CON fee schedule used by the Kentucky Commission for Health Economics Control.)

Mr. Samuel B. Folio
July 15, 1987
Page Two

- Certificate of need applications not proposing a capital expenditure or proposing a capital expenditure of \$150,000 or less shall be assessed an application fee of fifty dollars (\$50).
- Certificate of need applications which propose a capital expenditure greater than \$150,000 but not more than \$5,000,000 shall be assessed an application fee at a rate of five hundredths of one percent (.05%).
- Certificate of need applications which propose a capital expenditure greater than \$5,000,000 but not more than \$10,000,000 shall be assessed a base fee of \$2,500, plus an additional fee of four hundredths of one percent (.04%) of the amount in excess of \$5,000,000.
- Certificate of need applications which propose a capital expenditure greater than \$10,000,000 but not more than \$30,000,000 shall be assessed a base fee of \$4,500 plus an additional fee of three hundredths of one percent (.03%) of the amount in excess of \$10,000,000.
- Certificate of need applications which propose a capital expenditure greater than \$30,000,000 shall be assessed a base fee of \$10,500 plus an additional fee of one hundredth of one percent (.01%) of the amount in excess of \$30,000,000.

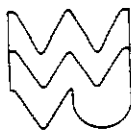
We appreciate the opportunity to offer comments on the proposed fee schedule for Certificate of Need. Please feel free to contact me should you have questions regarding these comments.

Sincerely,



Evan J. Ray
Director of Planning

EJR/kak



West Virginia University Hospitals, Inc.

Office of the President

July 17, 1987

Walter J. Dale
Chairman
West Virginia Health Care Cost Review Authority
100 Dee Drive
Charleston, West Virginia 25311

Dear Mr Dale:

On behalf of West Virginia University Hospitals, I would like to comment on the proposed procedural rules for the Certificate of Need Program and for the rate review program which were promulgated at the June 15, 1987 meeting of the West Virginia Health Care Cost Review Authority.

The intent of H.B. 2342 was to streamline the process for the rate review and certificate of need programs to ease the administrative and financial burdens of complying with program requirements. In the proposed regulations, this simple concept is made unnecessarily complex, cumbersome and costly, thus defeating the intent of the original legislation.

Hospitals within West Virginia are facing difficult financial times. The inability of the state to promptly pay its Medicaid and Public Employee Insurance Board obligations has pushed many hospitals to the brink of insolvency. Indigent care is another problem of serious magnitude in West Virginia. WVU Hospitals alone provided over \$18.2 million of uncompensated care in 1986. In addition to these burdens, hospitals must pay significant assessments to support HCCRA's budget. Implementation of HCCRA's proposed procedural rules would compound these financial difficulties.

The following comments address our specific concerns with the proposed regulations:

CON Changes

While we recognize that HCCRA is permitted to charge a fee for CON activities, the proposed fee schedule is unnecessarily costly and fails to provide a real discount to hospitals in recognition of the significant sums hospitals pay through HCCRA assessments.

If this system had been in place in 1986, WVU Hospitals would have paid \$30,000 in addition to its \$126,000 assessment - a total of \$156,000. To recover just the CON cost of \$30,000, West Virginia University Hospitals would have had to charge an additional \$3.45 for each and every admission in 1986. The CON application for Ruby Hospital, a vital replacement project which will improve the quality of healthcare for several generations of West Virginians, would have cost more than \$220,000 above and beyond the hospital's annual assessment. Fees of this magnitude clearly increase the cost of healthcare, thus contradicting the mission of the Health Care Cost Review Authority.

The 1987 Legislature approved a \$1,070,000 spending budget for HCCRA with an additional \$200,000 for health planning functions. WVU Hospitals' assessment alone will provide 10% of HCCRA's budget. In aggregate, HCCRA will receive \$1.4 million from hospital assessments in 1987. This amount is well above the amount the agency is legally permitted to spend. The fees for CON filings obviously are not needed, therefore hospitals should pay no fees or only nominal fees (\$25) at most.

The proposed fees for declaratory rulings are particularly disturbing. Not only will hospitals be required to pay excessive amounts for the CON applications themselves, they will also have to pay a significant fee just to determine whether a given project is reviewable. This provides an inherent disincentive for hospitals to comply with the regulation.

The Authority has also placed hospitals at a significant disadvantage in the areas of primary care, hospice care and home health care CON applications. If the Authority wishes to encourage development of these categories of health care throughout the state, the discounts afforded to small non-profit entities should be extended to hospitals as well.

An alternative approach to CON fees used in several other states is to waive CON fees for hospitals which provide a high level of indigent care. This method would at least give some recognition to those hospitals which make significant contributions to the state by the provision of care to the indigent.

While we firmly believe that the implementation of fees for CON matters is excessive and duplicative of the hospital assessments already paid to HCCRA, if fees must be implemented, we suggest several changes to the proposed rules. At a minimum, fees charged to hospitals should be significantly lower than those proposed to account for our existing payments to HCCRA. We also strongly believe that maximum or "cap" levels should be set on fees paid for each individual CON application and on the total amount of fees paid in one year by any one institution.

RATE REVIEW Changes

We believe that the intent of H.B. 2342 is to streamline the rate review process. The language of the bill clearly implies that hospital rate review should be conducted on an exceptions basis whereby increases less than or equal to the national hospital inflation rate published by the US Bureau of Labor Statistics are to be automatically approved. On this basis, only increases which exceeded the national average inflation rate would qualify for review.

The structure of the proposed regulations and the selection of an inflation index other than that specified by the Legislature would maintain the present full review process despite the intent of H.B.2342.

Although the proposed regulations contain the required exception process for rate increases less than the national hospital inflation rate, in practical terms, the constraints of Section 5.8 regarding outpatient and nonpatient revenue changes will render this process inoperable for hospitals. Many outpatient services, particularly ancillary services, are similar to inpatient services and indeed are produced by the same equipment and personnel. Consequently, many outpatient services share inpatient service cost structures. Therefore, a change in service costs which would cause a hospital to adjust its inpatient rates would also require a hospital to adjust its outpatient rates as well. By changing its outpatient rates, a hospital would automatically be disqualified from the exemption process of Section 5, Rate of Inflation Increases, and would presumably be subject to full rate review.

The simplification of the rate review process is further constrained by selection of an inappropriate inflation index. The language of H.B. 2342 specifically directs the Authority to utilize a component of the consumer price index published by the US Bureau of Labor Statistics. Although the name of the BLS component was stated incorrectly in the legislation, there is no doubt that the Legislature intended the Authority to utilize a BLS statistic which reflects consumer costs and not a forecast developed by a private organization which predicts internal industry costs.

The hospital inflation index selected by the Authority (Section 5.5) currently is approximately 3 percentage points below the Hospital component of the Bureau of Labor Statistics Consumer Price Index. This will result in unnecessary reviews by HCCRA which place unneeded administrative burdens on hospitals and increase the Authority's own workload and costs. This regulation cannot be reconciled with the legislative directive to streamline the rate review process and reduce the administrative burden on hospitals.

The commencement of the time limit on requests for reconsideration of disputed orders (Section 4.8) is inconsistent with other sections of the regulations. The proposal would allow requests for reconsideration within twenty days of the entry of the disputed order. We suggest that the twenty day time limit begin at the time the hospital receives notice of the order by certified mail.

Given the controversy and lack of clarity over several portions of Section 5, Rate of Inflation Increases, imposition of criminal penalties in Section 5.9 is unduly severe. The regulatory penalties contained within the proposed regulations and the Act are sufficient to ensure compliance with the regulations. Hence, the criminal penalties should be removed.

In summary, we believe the regulations proposed by HCCRA do not mirror the legislative intent of H.B. 2342. The excessive Certificate of Need fee schedule, the exclusion of outpatient rate requests from the review exemption process and the selection of an inappropriate hospital inflation index clearly conflict with the legislative goal of streamlining the review process and easing the administrative and financial burdens on hospitals and HCCRA. We believe our proposed modifications would allow both HCCRA and hospitals to realize the efficiencies embodied within the intent of H.B. 2342.

Respectfully,



Steve Pickett
Vice President Finance

SAP/DG

WEST VIRGINIA HOSPITAL ASSOCIATION

SUBMISSION OF COMMENTS

ON

PROPOSED PROCEDURAL RULES

OF THE

HEALTH CARE COST REVIEW AUTHORITY:

FEE SCHEDULES FOR CERTIFICATE OF NEED MATTERS

WEST VIRGINIA HOSPITAL ASSOCIATION

JULY 20, 1987

Gentlemen:

The West Virginia Hospital Association is pleased, on behalf of its member hospitals, to provide the following written comments relating to the proposed procedural rules issued by the Health Care Cost Review Authority (hereinafter referred to as "HCCRA," or "the Agency") entitled: "Fee Schedule for Certificate of Need Matters."

Section 2 Introduction

Subsection 2.3 of the proposed procedural rules contain a statement of both notice and policy by the HCCRA Board as follows:

2.3 The Health Care Cost Review Authority also takes note that the State's acute care hospitals fund the general operations of the agency through the assessment provided for by West Virginia Code, §16-29B-8(c). Hence, the agency is of the opinion that accomodation of that fact should also be made in setting a fee schedule.

It is significant in applying this policy statement to Section 4, fees charged to acute care hospitals, as hospitals are placed in the position that the above notice and policy statement is without meaning. A comparison of proposed fees for acute hospitals and the general fee schedule clearly demonstrates the fact that subsection 2.3 is a nullity:

<u>Activity</u>	<u>Acute Care Hospital</u>	<u>General Fee Schedule</u>
Request for Exemptions or Declaratory Rulings	\$450.00	\$500.00
Notices in lieu of an Application	\$900.00	\$1000.00
Applications for CON Approval	.18% of Capital Expenditure	.20% of Capital Expenditure

Secondly, hospitals are being assessed at one-tenth of one percent of total gross revenues. This is the maximum amount of assessment allowable by statute. It is estimated that HCCRA will generate in excess of 1.4 million dollars from hospitals. Given this amount of financial support by hospitals and the statement of policy contained in subsection 2.3, the insignificant difference between charges to hospitals and the general fee schedule, it is respectfully suggested that Section 4 should be changed in its entirety and that hospitals be charged the same fee - twenty-five dollars - as contained in subsection 3.1. Additionally, the term "non-profit entity" as used in subsection 3.1 and other portions of this subsection should be modified to incorporate this change.

Additionally, the Legislature has only authorized a total spending budget for HCCRA of \$1,070,000 this fiscal year. This amount and the \$200,000 that will be transferred to the Health Department in order to support health planning functions only result in \$1,270,000 in funding needs for HCCRA.

Since HCCRA will be receiving \$1.4 million from hospital assessments this year, their revenues will already exceed the amount the Legislature has authorized them to expend. We therefore believe that HCCRA should substantially reduce the fees charged hospitals. The imposition of the fees this year will serve no purpose other than to generate additional revenues that HCCRA has no legal authorization to spend and to add to the already existing financial burdens of hospitals (especially small and rural hospitals).

Alternatively, hospitals should be exempt from any filing fee due to their significant and sole financial support of HCCRA, particularly when compared with other health care providers.

Other Matters

There are additional concerns with regard to the language of the proposed rules. A great deal of confusion stems from the lack of clarity in defining what types of activities would be subject to the fees required for the requests for exemptions under section 4.2 and notices under section 4.3. Section 4.3 deals with "...notices in lieu of an application such as those provided for in West Virginia Code, §16-2D-4..." This becomes confusing because §16-2D-4 is the section of the certificate of need law, which addresses exemptions from the certificate of need program.

While we agree that a degree of flexibility must be maintained when promulgating rules we do not support the complete absence of guidelines which allow HCCRA the discretionary authority to determine under which category a particular activity would fall. Also, in the absence of such guidelines and in light of HCCRA's recent penchant for making everything reviewable as a new service, hospitals will be forced to ask HCCRA's opinion on virtually any activity they undertake. This lack of articulation of clearly defined criteria does not serve the accepted objectives of Administrative rule making.

This rule also fails to address the following questions:

- 1) Is the filing fee to be considered as part of the capital expenditure of a proposal;

- 2) If HCCRA determines that the claimant must file an application after reviewing the notice or request for exemption, will credit be given for fees already paid;
- 3) Since the fee has to be paid up front, will the applicant receive a refund (with interest) if upon a substantial compliance determination the capital expenditure was less than that projected?

If so, by what procedures will HCCRA issue the refund and in what time periods;

- 4) Will there be a full or partial refund if the applicant withdraws the application or places the application on hold; and
- 5) Will there be a cap on the maximum fee charged as a percentage of the capital expenditure as is done in other states?

Finally, given the ambiguity of the CON statute, the lack of direction provided by the rules in defining what types of activities require notification or an exemption determination, and the lack of consistency with which precedents are set by HCCRA, the penalty provisions of Section 6.3 would seem severe. Notably, no factors are listed which give hospitals and other health care providers notice of factors the Agency will utilize in determining if penalties will be imposed.

M E M O R A N D U M

TO: Secretary of State
FROM: West Virginia Health Care Cost Review Authority
RE: Responses to Comments and Changes in Proposed "Procedural Rule
For Requests For Hospital Rate Changes"

Up through the time of the holding of the public hearing on July 20, 1987, the Authority received several written comments on this proposed rule. As a result of the comments, numerous changes were made in the proposed rule. However, the essential purpose of the rule was not changed.

This memorandum will take up the points made by each commentor and shall state the Authority's responses.

A. Charleston Area Medical Center, Highland Hospital, and St. Francis Hospital -- by Jack Canfield.

(1) Initial objection was made to the use in subsection 5.5. of the rate of inflation measurement as derived from reports by the Data Resources, Inc. Mr. Canfield argues that the Consumer Price Index was intended to be used by the Legislature. The Authority notes that the legislation specifically refers to the "hospital market basket component of the Consumer Price Index as reported by the United States Bureau of Labor Statistics...." The referred to item does not exist. The Authority was then left in the position of deeming this requirement void and of no legal effect

-- which was the minority position of the board -- or of reforming the section by substituting some other rate of inflation index commonly used in the industry. Since 1984, the Authority has used the index prepared by Data Resources, Inc., because it is a prospectively oriented index. It predicts what inflation in hospital expenses will be. The Consumer Price Index's various components are retroactive. That is, they measure what inflation has been in the past. In addition, the index also measures the rate of inflation in charges to consumers. A majority of the board is of the opinion that the language of the statute should be reformed. Hence, the proposed rule has been amended to utilize a rate of inflation based upon the "hospital and related services" item of the Consumer Price Index for all urban consumers as reported by the United States Bureau of Labor Statistics. This item is the most useful one for rate review purposes and appears to most closely correspond to legislative intent.

(2) Mr. Canfield also comments that section 5 of the proposed rule refers to "gross inpatient revenue per discharge" throughout and urges that the "per discharge" measure be used by the Authority exclusively.

The Authority rejects this suggestion. The amendment to the rate review statute specifically refers to the rate per discharge for the automatic rate increases. The amendment does not purport to affect the Authority's methodology for reviewing proposed rate increases in excess of the rate of inflation. Hence, the Authority does not perceive a reason for inferring that the Legislature intended to mandate that a rate per

discharge be developed for all rate review purposes. The Authority will continue to set per day revenue limits in its standard rate review decisions.

(3) Mr. Canfield complains that subsection 5.9. of the proposed rule is ambiguous. The Authority has reviewed the proposed language and has rewritten the subsection in order to clarify its intent.

(4) Mr. Canfield next comments that the terms "interested persons," "interested party," and "persons affected" are used in an inconsistent manner. He also suggests that the terms be clearly defined and that specific requirements for documentation be provided.

The proposed rule was amended to use the term "interested party" to the exclusion of other terms. The Authority declines to implement a static, generalized definition of what or who an "interested party" is. Rather, the proposed rule requires that the person or entity involved state the basis for its claim of interest. Such claims can then be decided upon on a case-by-case basis.

(5) Mr. Canfield next comments that subsections 5.10. and 6.6. should be amended so that it is clear that a hospital can request a hearing in its own case. This change was agreed to by the Authority.

(6) Objection was made to subsection 4.1.'s requirement that a hospital provide the Authority with a "specific statement of all assumptions relied upon in preparing the budget." Mr. Canfield notes that

some assumptions might be proprietary in nature. The Authority notes that this is an old requirement imposed by the existing procedural rule since 1984. However, the Authority cannot agree to its deletion. Effective review of a hospital's proposed budget requires an understanding of the assumptions that a hospital is making. Since the Authority's rate review process relies heavily upon a hospital's proposed budget for information purposes in deciding the reasonableness of a requested rate increase, the Authority believes it should have access to all of the information upon which the rate requested is premised.

(7) Mr. Canfield suggests that subsection 4.7. be amended so that copies of the rate increase applications would be available only at the Authority's offices and not at the hospital. The Authority rejects this suggestion. While all rate applications are available at the Authority's offices for inspection by the public, many hospitals are not within easy travelling distance of Charleston. Hence, the Authority believes that a member of a hospital's community should not have to travel from -- for example -- the eastern panhandle to Charleston to review an application. Requiring that the hospital have a copy available on its own premises for public inspection does not appear to the Authority to be onerous.

(8) Mr. Canfield suggests that subsection 6.1. is confusing. The Authority has modified the language used in order to make the section clearer.

(9) Finally, Mr. Canfield objects that the fiscal note filed with the Secretary of State should indicate an increase in the workload and costs upon the hospitals rather than lessening the costs. The Authority notes that, for the most part, the requirements of this rule are already in effect and have been in effect since 1984. The major changes relate to the automatic rate of inflation increase and to a change in the procedure for handling temporary rate increases. In both situations, the burden on the hospitals has been reduced. The rule does not impose any additional burden elsewhere that is not already in existence. Hence, the Authority remains convinced that the overall effect of this rule will be to reduce costs to the hospitals.

B. Grant Memorial Hospital -- by Robert L. Harman. Mr. Harman's comment on the proposed rule concerned the use of the Data Resources, Inc., measurement for the rate of inflation. As was noted above in the responses to Mr. Canfield's comments, this measurement was changed.

C. HCA-Putnam General Hospital -- by Dennis P. Bridgeman. Mr. Bridgeman also objected to the use of the Data Resources, Inc., measurement for the rate of inflation. This was addressed earlier.

D. Bob Ashley, Member, House of Delegates. Again, Mr. Ashley objected to the use of the Data Resources, Inc., index.

E. St. Joseph's Hospital -- by Arthur A. Maher.

(1) Mr. Maher first comments that he does not know when the penalties mentioned in subsection 5.9. will be applied. He thus questions how a hospital can avoid such penalties and what should a hospital do if it actually obtains greater amounts of revenues per discharge than the rate of inflation.

The Authority notes that subsection 5.9. does not impose penalties. It merely notifies the hospitals that the various penalty provisions exist. West Virginia Code, § 16-29B-27, imposes a misdemeanor upon anyone who violates the statute or "any valid order or rule and regulation...." Hence, any party who exceeds the revenue limits set by the Authority's orders or who puts into place an automatic rate increase under section 5 of this rule that in actuality turns out to be greater than the rate of inflation bears the risk of violating section 27 and incurring the civil penalties of section 21 of the Act. Mr. Maher's questions are really beyond the scope of this rule. However, the Authority does encourage the hospitals to monitor their compliance with their individual revenue limits. In the event a hospital anticipates exceeding a limit, it is recommended that the hospital inform the Authority. In addition, the hospital is encouraged to examine the reasons for the excess and to take steps to reduce its averages for that particular revenue limit.

(2) Mr. Maher objects that section 5 makes the automatic rate of inflation increase inapplicable to outpatient and other non-inpatient revenues. A close reading of West Virginia Code, § 16-29B-20(j), indicates that the Legislature may have intended the automatic increase to apply

only to the average revenue per discharge and not to other revenue categories. Section 5 of the rule was written on that interpretation. However, the Authority's use of the "hospital and related services" item of the Consumer Price Index logically results in applying the automatic increase to other revenue categories as well. This is because the item itself has components related to outpatient services and other revenues. Hence, the section was changed to allow the automatic increase to apply to other revenues.

(3) Mr. Maher questions when the compliance reports of former section 11 will be required. This provision is not new and is in the existing rule. However, section 12 has been amended to specify that compliance reports will be necessary when there is reason to believe that a hospital is exceeding its revenue limits.

(4) Finally, Mr. Maher comments on the use of the Data Resources, Inc., inflation figure. This has already been addressed.

F. United Hospital Center, Inc. -- by Irene M. Keeley, Esquire. Ms. Keeley's comments were limited to the use of the Data Resources, Inc., inflation figure.

G. West Virginia University Hospitals, Inc. -- by Steve Pickett.

(1) Mr. Pickett first objects to the use of the Data Resources, Inc., inflation figure.

(2) Mr. Pickett also objects to section 5's exclusion of increases in a hospital's outpatient and other non-inpatient revenues from the automatic rate of inflation increases. This was discussed above and section 5 has been amended to include these other revenues within the provisions of section 5.

(3) Mr. Pickett next suggests that subsection 4.8. should be amended so that the twenty (20) day reconsideration period begins to run from the date of receipt by the hospital of the Authority's order. The Authority agrees with this change and subsection 4.8. has been amended.

(4) Finally, Mr. Pickett objects to the provision for criminal penalties and suggests that they be "removed." As was discussed above, section 27 of the Act provides for the criminal penalties and not this rule which only serves to put the hospitals on notice of section 27's provisions.

H. West Virginia Hospital Association -- by Ken Rutledge.

(1) Initially, Mr. Rutledge comments that under subsection 4.4. that the hospital be informed of the staff's recommendation for revenue limits and then it be given a 14-day period in which to respond to the staff's recommendation. The Authority notes that this section is from the existing rule and represents existing practice. The Authority rejects the suggested change. The hospital is initially required to file an application in support of its requested rate change. The Authority's staff and the hospital often communicate to clarify confusions and errors. Only then does the

staff make a recommendation to the Authority's board. The Association's suggestion would create a distance between the board and its staff. Unlike the Public Service Commission, the Authority's staff is not necessarily an independent party to a rate request. The Association's suggested change would tend to make it so. Also, the staff's recommendations are taken from certain computerized printouts which are prepared for each application. These printouts are made part of the administrative record for appeals purposes as is required by the Administrative Procedures Act.

(2) Mr. Rutledge also notes that subsection 4.4. should require that the hospital be given notice of any decision before notice of the decision is given to the hospital's community and the news media. The Authority's practice has been to first mail a decision to a hospital and then twenty-four (24) hours later mail it to other interested parties including the press. This practice has been written into the rule.

(3) Mr. Rutledge also objects to the hospitals having to make available a copy of a rate increase application on its premises. This criticism has been addressed above.

(4) Mr. Rutledge suggests that subsection 4.8. be amended to require the Authority to indicate its reasons for denying a request for reconsideration. Under the Administrative Procedures Act, the Authority must issue a written decision which states its reasons for the actions taken. This requirement has been written into this rule.

(5) Mr. Rutledge also objects to the use of the Data Resources, Inc., inflation factor. This has been addressed above.

(6) Mr. Rutledge also objects to the exclusion of outpatient and other non-patient revenues from the automatic rate of inflation system. This has been addressed above.

(7) Mr. Rutledge also objects to the statement in subsection 5.9. concerning the potential for criminal charges. As stated above, subsection 5.9. serves to place hospitals on notice concerning section 27 of the Act. It itself does not impose the criminal sanctions. Such sanctions would not be imposed by the Authority; rather, they would be under the sway of the local county prosecutors.

At the public hearing on July 20, 1987, the individuals noted above appeared and read into the record their written comments which will not be repeated here since they have already been addressed. In addition, Mr. William L. Sheppard, representing Princeton Community Hospital, appeared and addressed the board.

(1) Mr. Sheppard initially objected to the use of the Data Resources, Inc., inflation factor. That issue has been addressed.

(2) Mr. Sheppard also critiqued subsection 5.9. for its statement of the criminal and other penalties. As has been noted above, subsection 5.9.

merely places the hospitals on notice of those penalties and does not itself require them.

The Authority made two other changes to the proposed rule. First, subsection 5.11. was added to provide for a mechanism to correct a potential problem. Under the automatic rate of inflation increase system, a hospital might believe it could exceed its revenue limits for a past year and still be entitled to a full rate of inflation increase on top of the excess. This is not correct and new subsection 5.11. so states. It also indicates that the Authority will monitor the hospitals to ensure against this eventuality.

Second, the Authority added section 8. This provision requires that a hospital be in compliance with the West Virginia Health Care Facility Financial Disclosure Act, West Virginia Code, § 16-5F-1 et seq., before any type of rate change will be permitted. This change codifies what the Authority has already been doing.