

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

Do Not Mark In this Box

FILED
1987 AUG 17 AM 9:31

**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: 16-2D ⁶⁵

CITE AUTHORITY: West Virginia Code, § 16-2D-5(g), -8; § 16-29B-11

RULE TYPE: PROCEDURAL INTERPRETIVE

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

AMENDMENT TO AN EXISTING RULE: YES , NO

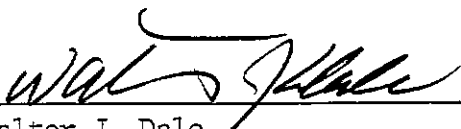
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: (ie, 10)

TITLE OF RULE BEING ADOPTED: Fee Schedule for Certificate of Need
Matters

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


Walter J. Dale
Chairman



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

The Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, West Virginia

Dear Mr. Hechler:

RE: Proposed Procedural Rule: Fee Schedule for Certificate of Need Matters.

In accordance with the West Virginia requirements for rule making, enclosed herewith please find two (2) copies of each of the following documents:

- (1) The final approved procedural rule titled "Fee Schedule for Certificate of Need Matters".
- (2) Copies of the fiscal note for this procedural rule.
- (3) Copies of the Notice of Agency Adoption of this procedural rule showing its effective date to be September 17, 1987.
- (4) Copies of the register of the attendees at the July 20, 1987, public hearing in this matter.
- (5) Copies of the written comments which were received on this proposed procedural rule.
- (6) Copies of the transcript of the public hearing held on this procedural rule.
- (7) A memorandum detailing the Authority's responses to the comments it received on the proposed procedural rule as well as explanation of the changes made to the procedural rule.
- (8) Copies of the Promulgation History Abstract for this rule.

Also, because this a rule under the Certificate of Need Program, West Virginia Code, §16-2D-8, requires that certain notices be issued beyond those normally required by the Administrative Procedures Act. Accordingly, enclosed herewith please find copies of affidavits of publication of twenty (20) newspapers from around the state showing that a legal advertisement was published concerning this proposed rule in each of the Regional Health Planning areas across the state. Also, enclosed are copies of the News Release and Legal

The Honorable Ken Hechler
August 17, 1987
Page Two

Notice that were distributed to the various news media headquartered in the Capitol Press Office. In addition, the Legal Notice was published in the news letter of this agency which is sent to all individuals and other entities who have requested to be placed upon a mailing list for the receipt of notices of our actions. Finally, you will also note the presence of a copy of a letter dated June 15, 1987, addressed to Dr. Otis R. Bowen, Secretary, United States Department of Health and Human Services, from Walter J. Dale, Chairman, West Virginia Health Care Cost Review Authority. Section 8 of the certificate of need law specifically requires that notice be sent to the Secretary of Health and Human Services in the event that a certificate of need rule is amended or a new one proposed. This letter and its attached certified mail return receipt indicates that we have done that.

Please file these documents in the usual manner so that this procedural rule may become effective on September 17, 1987.

Much appreciation for your assistance in this matter, I remain

Very truly yours,



WALTER J. DALE
Chairman

WJD/JHK/bkm

FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: Fee Schedule For Certificate of Need Matters 1987 AUG 17 AM 9:31

Type of Rule: Legislative Interpretive Procedural
CLARENCE B. BROWN SECRETARY OF STATE

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	\$	\$	\$	\$	\$
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

This rule provides a funding source for the existing certificate of need program. Hence, there will be no additional costs to the agency as there will be no change in the agency's operations.

3. Objectives of these rules:

West Virginia Code, § 16-2D-5(g), authorizes the charging of fees in certificate of need matters relating to the filing of applications, notices in lieu of an application, exemption determination requests, and requests for declaratory rulings. The purpose of these fees is to fund the operations of the certificate of need review program. The fees charged will be special revenue and the revenue is to be deposited in a special fund known as the Certificate of Need Program Fund.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The rule provides a special revenue source for the certificate of need program and, thus, will avoid the use of general revenue to fund the program's operations.

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

The cost of operating the certificate of need program will be borne by those entities using the program. The revenues generated are expected to be some \$120,000 per year. Discounts are given to small, non-profit entities and the acute care hospital's already assessed pursuant to West Virginia Code, § 16-2D-8. A waiver of the fee is given to financially hardpressed hospitals.

C. Economic Impact on Citizens/Public at Large.

There will be no direct economic impact on citizens/public at large. Ultimately, of course, the entities using the certificate of need program will pass along all their costs, including these fees, to their customers.

Date: August 17, 1987

Signature of Agency Head or Authorized Representative

Waldman

PROMULGATION HISTORY ABSTRACT

Rule Title: Fee Schedule for Certificate of Need Matters

Rule Type: Procedural

Filed Notice for 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

PROCEDURAL RULE
HEALTH CARE COST REVIEW AUTHORITY
CHAPTER 16-2D
SERIES X

FILED
1987 AUG 17 AM 9 31
SECRETARY OF STATE

Title: FEE SCHEDULE FOR CERTIFICATE OF NEED MATTERS

Section 1. General

1.1. Scope - These rules establish the schedule of fees for the filing of applications and exemption requests under the West Virginia Certificate of Need Program. Pursuant to West Virginia Code, § 16-29B-11, the Health Care Cost Review Authority is authorized to administer the provisions of the Certificate of Need Program. West Virginia Code, § 16-2D-1 et seq.

1.2 Authority - West Virginia Code, § 16-2D-5(g), § 16-2D-8, and § 16-29B-11.

1.3 Filing Date - August 17, 1987.

1.4 Effective Date - September 17, 1987.

Section 2. Introduction

2.1. West Virginia Code, § 16-2D-5(g) authorizes the charging of fees "for the filing of any application, the filing of any notice in lieu of an application, the filing of any exemption determination request, or the filing of any request for a declaratory ruling." The statute further provides that the "fees charged may vary according to the type of matter involved, the type of health service or facility involved, or the amount of capital expenditure involved." Finally, the statute directs that the fees received shall be deposited into a

special fund known as the "Certificate of Need Program Fund" and are to be expended for the purposes of the program.

2.2. In setting a fee schedule the Health Care Cost Review Authority wishes to take note that certain local community groups that seek to offer institutional health services often do not have sufficient capital resources to pay a significant fee. Such non-profit groups that seek to offer hospice, primary care, and home health services fulfill an important need in their communities and should not be barred by the imposition of a significant fee. Hence, these rules provide for special treatment of those facilities.

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 assessments 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.

2.4. The Health Care Cost Review Authority also wishes to take note that several of the state's acute care hospitals are in serious financial difficulties. It appears to the Authority that special consideration needs to be given to these hospitals as they apply for certificates of need to improve their financial condition so that the fee schedule itself does not deter such hospitals from obtaining relief.

Section 3. Fee Schedule

3.1. The fee to be paid by a health care facility or other entity upon filing an application or a request for an exemption shall be based upon a combination of the type of matter, the health service and facility involved, and the amount of the capital expenditure proposed. In addition, the Health Care

HCCRA
Pro. Rule, 16-2D
Series X, Sec. 2

Cost Review Authority has taken into account the amount of staff time and resources that can be expected to be expended during the review of the various types of certificate of need applications and requests for exemptions.

3.1. There shall not be any fee imposed for the filing of a request for a declaratory ruling pursuant to West Virginia Code, § 29A-4-1 et seq., or for a request by any entity for a determination of whether any specific proposal is reviewable by the certificate of need program.

3.2. Fees for applications -- The following fees shall be paid concurrently with the filing of the following types of applications.

3.2.1. Hospice Proposals - A \$25.00 fee.

3.2.2. Group Home Proposals - A fee of \$50.00 per proposed bed.

3.2.3. Home Health Agency Proposals - A \$500.00 fee.

3.2.4. Proposals to develop ambulatory health care facilities, including but not limited to, renal dialysis centers, primary care centers, satellite or branch clinics of either primary care centers or acute care facilities, outpatient clinics, or urgent care centers - A \$500.00 fee.

3.2.5. Ambulatory surgical facilities - The fee shall be a minimum of \$1,500.00 with an additional fee of \$500.00 for each surgical room proposed in excess of an initial two (2) rooms. For example, an ambulatory surgical facility with two (2) surgery rooms would be charged a fee of \$1,500.00. An ambulatory surgical facility with three (3) surgery rooms would be charged a fee of \$2,000.00.

HCCRA
Pro. Rule, 16-2D
Series X, Sec. 2

3.2.6. A proposal to acquire any existing health care facility, other than those proposals which are exempt from review - A fee of \$1,000.00.

3.2.7. A proposal for the development of an intermediate or skilled care facility or a mental health facility that proposes to offer alcohol or substance abuse treatment. - A fee of \$100.00 per proposed bed.

3.2.8. A proposal for the addition of personal care beds by any existing health care facility. - A fee of \$100.00 per proposed bed.

3.2.9. The acquisition of major medical equipment except where such acquisition is exempt from review. - A fee of \$500.00.

3.2.10. A proposal for the addition of a health service by or a change to the health services of any health care facility, except where such addition or change is exempt from review. - A fee of \$500.00.

3.2.11. A proposal to develop a new acute care facility of any type, including psychiatric, rehabilitation, or general acute care. - A fee of \$200.00 per proposed bed.

3.2.12. A proposal by an acute care facility to incur a capital expenditure in the following ranges.

3.2.12.1. \$1,000,000.00 to \$10,000,000.00. - A fee of \$500.00 except for those expenditures that qualify for an exemption from review.

3.2.12.2. \$10,000,001.00 to \$20,000,000.00. - A fee of \$1,000.00.

3.2.12.3. \$20,000,001.00 to \$30,000,000.00. - A fee of \$1,500.00.

HCCRA
Pro. Rule, 16-2D
Series X, Sec. 2

3.2.12.4. \$30,000,001.00 and above. - A fee of \$2,000.00.

3.2.13. A proposal by any non-acute care health care facility to incur a capital expenditure in the following ranges.

3.2.13.1. Up to \$1,000,000.00. - A fee of \$500.00 except for those expenditures that qualify for an exemption from review.

3.2.13.2 \$1,000,001.00 to \$10,000,000.00. - A fee of \$1,000.00 except for those expenditures that qualify for an exemption from review.

3.2.13.3. \$10,000,001.00 to \$20,000,000.00 - A fee of \$2,000.00.

3.2.13.4. \$20,000,001.00 to \$30,000,000.00. - A fee of \$3,000.00.

3.2.13.5. \$30,000,001.00 and above. - A fee of \$4,000.00.

Section 4. Fee Schedule for Exemption Requests

4.1. There shall be a \$100.00 fee for the filing of any request for an exemption from certificate of need review pursuant to the various subsections of West Virginia Code, §16-2D-4.

4.2. Requests for determination of exemptions under West Virginia Code, § 16-2D-4(i), shall not be subject to the imposition of a fee. However, if the Authority should determine that the filing of an application is necessary pursuant to West Virginia Code, § 16-2D-4(i)(4), then the fee charged shall either be in accordance with subsection 4.1. of these rules or with section 3 of these rules, whichever is applicable.

Section 5. Waiver of Fees

Any acute care facility which has had an average of less than \$150,000.00 in net revenue over expenditures for its immediately past three (3) fiscal years shall be granted a waiver of all certificate of need fees.

Section 6. Credits and Refunds of Fees

6.1 There shall not be any refund of any fee paid for any reason except if the fee should not have been paid in the first place or unless too high of a fee was paid.

6.2 In the event an entity files an exemption request which is denied, that entity will receive a credit of the fee paid for the exemption request against the fee to be paid for the filing of an application.

Section 7. Adjustments to Fees Paid

7.1 Should an application be changed or should the proposed or actual capital expenditure of any application be increased at any point during the review of the application or following approval and up to the substantial compliance determination, then the applicant's fee will be recalculated and if an additional fee is determined to be required, then all review or post-review activities shall be placed on hold until such additional fee is paid by the applicant.

7.2 Should an application be changed or should the proposed capital expenditures be decreased at any point after the filing of the application, there shall not be any refund of the fee paid by the applicant.

Section 8. Conflicts in the Applicable Fee

In the event that a proposal either fits into more than one category for the determination of the applicable fee or if more than one fee category is applicable to any given proposal, only one fee shall be imposed and that fee shall be the greater of the various applicable fees.

Section 9. Failures To Comply With Rule

9.1. Any filing that is subject to the charging of a fee but which is not accompanied by the required fee shall not be processed by the agency and shall not be legally effective until the required fee is received.

9.2. In those instances subject to section 7.1. of these rules where an additional fee is required because of a change in a proposal or of an increase in the proposed or actual capital expenditure, the state agency shall discontinue review or withhold substantial compliance determination until the required fee is paid.

9.3. Should any entity develop a new health service, a new institutional health service, or any other project that requires the filing of a request for exemption determination or an application without paying the required fee, the entity is hereby placed on notice that it may be subject to all of the penalty provisions of the certificate of need program including injunctive relief and imposition of a civil penalty pursuant to West Virginia Code, § 16-2D-13, and denial or revocation of license for operating pursuant to West Virginia Code, § 16-2D-12.

HCCRA
Pro. Rule, 16-2D
Series X, Sec. 2

Section 10. Severability

If any provisions of these rules or the application thereof to any entity or circumstance shall be held invalid, such invalidity shall not affect the provisions or the applications of these rules which can be given effect without the invalid provisions or application and to this end the provisions of these rules are declared to be severable. In addition, if the special treatment afforded by sections 3 and 4 of these rules is determined to be invalid, then the entities specified in section 3 and 4 shall become subject to section 5 of these rules.

LEGISLATIVE RULES
HEALTH CARE COST REVIEW AUTHORITY
CHAPTER 16-2D
SERIES X

Title: FEE SCHEDULE FOR CERTIFICATE OF NEED MATTERS

Section 1. General

2. Introduction
3. Fee Schedule
4. Fee Schedule for Exemption Requests
5. Waiver of Fees
6. Credits and Refunds of Fees
7. Adjustments to Fees Paid
8. Conflicts in the Applicable Fee
9. Failures to Comply With Rule
10. Severability

**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) Prop RIs for Regs for Hospital Rate Change

	Individual's Name:	Name of Organization:	Do you wish to speak? Y or N
1	K. H. Wood	Allegheny Gen Hosp	Yes
2	William L. Shepard	Princeton Com Hosp	Yes
3	Allen T. Meadows	Princeton Com Hosp	Yes
4	Tim Horner	Polack General Hospital	
5	in [unclear]	Wirtzville General	
6	in [unclear]	Wirtzville Gen. Hosp.	
7	Irene Keeley	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	Fau e D. Wright	Wenden-Clark Mem. Hospital	No
13	Daphne Schreiber	CAMC	NO
14	Walter M. [unclear]	Deeble Hospital Inc.	No
15	Paul Niskorn	consultant	NO
16	James H. [unclear]	St. Joseph's Hospital	NO
17	Olson [unclear]	Memorial Hospital	No
18	Sam E. Roberts	WVHA	NO
19	[unclear]	[unclear]	NO
20	W.R. [unclear], Jr.	WVHA	NO
21	STEVE PICKETT	WVU H	YES
22	David Gawaluk	WVU H	NO
23	GREG RICE	ARNETT FOSTER	NO
24	Bert Bennett	St. Francis Hospital	NO
25	[unclear]	[unclear]	NO
26	[unclear]	[unclear]	NO
27	[unclear]	[unclear]	NO
28	Ann [unclear]	Broadway Hosp.	NO
29	Paul [unclear]	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	Holden Hosp. Inc.	
32	Dennis Bridgman	Peterson General Hospital	
33	DAVID GREENE	Saint CHARLES Hospital	
34	Wm A. Chan	Jackson General	
35	LARRY ARNOLD	HEALTH DEPT.	Y
36	Tom Smith		
37			
38	Robyn Davis	Goodwin + Goodwin	
39	Allen Spelton	Eye Ear Clinic	
40	Robert E. Kee	Eye Ear Clinic	
41	David H. Seymour	Calhoun General Hospital	
42	Ernest H. Bell	Cabell Huntington Hospital	
43	Bill Jennings	" " "	
44	JOHN WARNICK	PRESTON MEMORIAL	
45			
46			
47			
48			
49			
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			



Arch A. Moore, Jr.
Governor

STATE OF WEST VIRGINIA
HEALTH CARE COST REVIEW AUTHORITY

Walter J. Dale
Chairman

Board Members
Larry C. Fizer
Don M. Keesling

MEMORANDUM

TO: Secretary of State

FROM: Health Care Cost Review Authority

RE: Responses to Comments and Changes in Proposed Procedural Rule:
"Fee Schedule For Certificate Of Need Matters"

DATE: August 17, 1987

During the public comment period, the Authority received a number of written comments on this proposed rule. As a result, the rule was substantially rewritten. However, the main purpose of the rule was not changed. This memorandum will first address the written comments to the proposed rule. Oral comments received at the July 20, 1987, public hearing will then be examined.

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

(1) Mr. Canfield initially objects that a fee should not be charged for requests for a determination of reviewability under the certificate of need program. He argues that parties should be encouraged to make such requests. The Authority agrees and the proposed rule has been amended. See subsection 3.1. Thus, there shall not be a fee for the filing of either a request for a determination of reviewability or for a declaratory ruling pursuant to West Virginia Code, § 29A-4-1 et seq.

(2) Next, Mr. Canfield argues against the charging of any fees at all. He suggests that the fees are discretionary, not mandatory, and are not needed. He further notes that the fiscal note does not detail how the amount of revenue expected to be generated by this rule was calculated.

There is no doubt that West Virginia Code, § 16-2D-5(g), is discretionary as opposed to being mandatory regarding the charging of fees. What this comment does not recognize is that the Authority's appropriation does not provide for the operation of the certificate of need program. In fiscal year 1985, the Authority received a grant from the federal health planning programs in the amount of \$245,242.00. Of this amount, \$132,839.00 was paid to the Department of Health pursuant to contract for the carrying-out of health planning activities. The remaining \$112,403.00 was used for salaries and fringe benefits for the certificate of need staff. That staff consists of a director, three analysts, and two clerical personnel. All other administrative costs were paid for by the Authority's general revenues.

For fiscal year 1986, the grant amount was \$237,800.00. The contract with the Department of Health was reduced to \$43,848.00 and effective July 1, 1985, the three health planners came under the Authority's general revenues. Certificate of Need received \$193,752.00 with \$118,730.63 for salaries and fringe benefits. Approximately \$35,000.00 in other administrative expenses were borne by the Authority's general revenues.

For fiscal year 1987, the Authority received a three-month grant in the amount of \$56,846.00. Of this, \$10,962.00 went to the Department of health for planning and \$45,884.00 was allocated for certificate of need.

For fiscal year 1988, there is no federal grant. In addition, West Virginia Code, § 16-2D-5a(k), requires the Authority to continue funding the Department of Health's planning function from the Authority's general revenues at the rate of \$200,000.00 since the Legislature did not otherwise fund that program. As this history shows, certificate of need and health planning have not been wholly supported by the Authority's general revenues in the past. To expect the Authority's 1988 appropriation -- which is similar in amount for the past fiscal years -- to suddenly pickup those expenses is to ignore that history. Further, it is the Authority's understanding that the Legislature explicitly recognized the short-fall created by the cessation of the federal grant program and amended section 5 of the Act to allow for the charging of fees to make-up for that short-fall.

As to the amount that will be generated by the proposed rule, the Authority notes that the certificate of need program has been impacted heavily by several amendments to the program. These amendments will have the effect of changing the numbers of applications that can be expected but of increasing the number of requests for exemptions determinations and requests for determination of non-reviewability. The amendment with the greatest impact will be the moratorium on new nursing homes required by new section 5(h) of the Act. Elsewhere in section 4 of the Act, the Legislature expanded the number of exemptions that are available to parties but also added in section 4(i) a seeming increased burden in requiring reviewability determinations.

How those changes will affect the program is unclear. Yet, the program must continue to be operational for the remainder of this fiscal year. As the Authority learns of these effects, it expects to modify the fee schedule accordingly.

(3) Mr. Canfield suggests that the rule will result in imposing a number of fees on one application. This is not the Authority's intent. In order to make that clear, section 8 was added to the rule to specify that only one fee is to be charged.

(4) Mr. Canfield suggests that fees should be charged for the filing of letters of intent rather than for other matters. In the Authority's view, section 5(g) of the Act does not allow for fees for filing letters of intent.

(5) Mr. Canfield ends by suggesting that the assessments on hospitals for the Authority's general revenues should be more specifically acknowledged either by allowing the hospitals a greater discount from the fees or by lowering the assessment. The Authority believes that this suggestion ignores the history of the funding of the certificate of need and health planning programs. The Authority's general revenues are not sufficient to cover those two programs. In addition, the hospitals are given a sizable discount by the rule.

B. United Hospital Center -- by Irene M. Keeley, Esquire.

(1) Ms. Keeley initially argues that the fees are not necessary given the Authority's general revenues. This argument has been addressed above. The Authority would add that it recognizes that its general assessment will not be completely spent this year. This is because the Legislature did not fully appropriate the amount assessed. Since the Authority can only spend the amount the Legislature has appropriated, the excess revenues from the assessment cannot be utilized by the Authority.

(2) Ms. Keeley suggests that the fees on reviewability requests is onerous and that the penalty provision of section 9 heightens that burden. The Authority has eliminated the fees on reviewability determinations. This action will eliminate the burden complained of.

C. Grant Memorial Hospital -- by Robert L. Harman.

(1) Mr. Harman suggests that greater allowance should be given to the hospitals because of their assessments. This point has been addressed above.

(2) Mr. Harman also suggests that greater specificity is needed to know when a project is reviewable. Requests for reviewability determinations are not to be charged a fee. In addition, greater definition of reviewability and exemptions is more properly the subject of legislative rules and not this procedural rule.

D. HCA -- Putnam General Hospital -- by Dennis P. Bridgeman.

(1) Mr. Bridgeman first suggests that the fees for reviewability determinations are excessive. These fees have been wholly eliminated.

(2) Mr. Bridgeman also believes that the remaining fees are excessive and that a maximum cap should be utilized. Such a cap has been provided for. In addition, the fee structure generally has been reduced.

(3) Mr. Bridgeman argues for a greater discount for the hospitals due to the assessment. This point has already been addressed.

(4) Mr. Bridgeman suggests that greater definition is needed for determining which category different projects fall into. The Authority believes this has been accomplished by limiting fees to applications and to exemption requests under section 4 of the Act.

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

(1) Mr. Maher suggests that the fee not be considered a capital expenditure in light of the ban on capital expenditures prior to the receipt of certificate of need approval for a project. The Authority believes that section 5(g) of the Act creates an exception to the ban. Whether or not the fees should be considered a capitalized expenditure is an accounting problem which may vary from project to project. Such a determination is beyond the scope of this rule.

(2) Mr. Maher contends the discount for hospitals is too low. This point has been addressed earlier.

(3) Mr. Maher suggests that the fees for notices in lieu of an application are too high. These fees have been eliminated as a category. Instead, the fees shall apply only to applications and section 4 exemptions. The latter group has been substantially reduced.

(4) Mr. Maher questions whether fees are to be assessed on affected parties requesting a hearing. Such fees are forbidden by West Virginia Code, § 16-2D-7(1)(5).

(5) Mr. Maher suggests that greater consideration should be given to financially distressed facilities. Section 5 of the proposed rule has been added which waives the fee for any hospital that has not averaged at least \$150,000.00 in annual net revenue over expenditures.

(6) Mr. Maher suggests a maximum fee of \$5,000.00 for applications. Subsection 3.2.12.4 has been amended to impose a maximum fee of \$2,000.00 for capital expenditures by a hospital and a maximum fee of \$4,000.00 for capital expenditures by other entities. Other fees vary according to the number of beds that are being added.

F. Weirton Medical Center -- by Marie F. Dunn.

(1) Ms. Dunn suggests that the \$450.00 fee for hospitals for exemptions and declaratory rulings is excessive. Fees for the latter have been eliminated. Section 4 exemption requests have been reduced to \$100.00.

(2) Ms. Dunn suggests a maximum fee be set for capital expenditures. This has been done as is noted above.

(3) Ms. Dunn suggests that fees paid by hospitals be deducted from the hospital's next assessment. The relationship between these fees and the assessment has been discussed above. Further discounts are not advisable in the Authority's view until experience is gained under the proposed rule.

G. Appalachian Regional Healthcare -- by Evan J. Ray.

(1) Mr. Ray initially argues that hospitals should be given a greater discount and that the fees set are too high. These points have been addressed previously.

(2) Mr. Ray contends that no fees should be charged for requests for exemptions, declaratory rulings, or for notices in lieu of applications. The Authority has decided to charge fees only for applications and for exemptions filed under section 4 of the Act. These two categories provide most of the intense portion of the program's workload and represent the areas where most staff time will be expended.

(3) Mr. Ray also comments that refunds should be provided for as well as credits if an exemption request is denied. Section 6 of the rule has been added to deal with refunds and credits. Subsection 6.2. provides for credits. Subsection 6.1. forbids refunds except where the applicant initially pays too high a fee or when no fee should have been paid. The Authority believes that by denying refunds, it will discourage frivolous matters and also will discourage the filing of claims intended only to block another applicant's projects. Additionally, with the tight review schedule mandated for applications and exemption requests, especially for completeness determinations, much staff time and resources will be expended at the beginning of a review. A refund would prevent receipt of revenues to cover such initial expenditures.

(4) Mr. Ray suggests a sliding fee schedule for capital expenditures rather than a straight percentage. The Authority has modified subsections 3.2.12. and 3.2.13. to provide for a sliding scale with a maximum cap.

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

(1) Mr. Pickett suggests that the fee schedule is too high and that greater discounts should be given to the hospitals. These points have been addressed previously.

(2) Mr. Pickett contends that the charging of fees is not necessary. This point has been addressed previously.

(3) Mr. Pickett contends that the fees for declaratory rulings are too high. These fees have been eliminated.

(4) Mr. Pickett comments that the proposed rule places hospitals at a disadvantage in the areas of primary care, hospice care, and home health care. The rule has been amended to set one fee in each of these areas regardless of who the applicant is. Thus, no one group is disadvantaged.

(5) Mr. Pickett suggests that hospitals with a high charity care load should receive waivers from the fees. The Authority believes it has taken this point into consideration by creating the waiver stated in new section 5. That is, if a hospital's profit level is reduced below a three year average of \$150,000.00 per year, then the fee is waived. If a hospital has provided sufficient charity that its net revenues over expenditures falls below that level, then the waiver would apply.

(6) Finally, Mr. Pickett argues that the fees are excessive, duplicative of the hospital assessment, that fees charged to hospitals should be lower, and that a maximum fee needs to be set. These points have been addressed earlier.

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

(1) Mr. Rutledge first argues that the hospital discount is not great enough. This point has been addressed earlier.

(2) Mr. Rutledge also argues that the discount given to hospitals should be the same as that given to small community groups. The Authority has already explained its opposition to a greater discount generally for hospitals. Further, it notes that the fees that will be charged to small, non-profit community groups for the projects they normally engage in will also be charged to any other group engaging in those same type of proposed projects.

(3) Mr. Rutledge also argues that the Authority's general assessment provides more than enough money for its operations. This point has been addressed above.

(4) Mr. Rutledge argues that the Authority will not be able to expend the revenues generated by the fee schedule. This is incorrect. According to the Legislative Auditor, these fees represent funds that can be expended without appropriation by the Legislature. All that is required is the filing of the necessary revenue and expenditure reports with various offices of state government.

(5) Mr. Rutledge notes that the original proposed rule was confusing in distinguishing between the categories of activities for which fees are to be charged. This confusion has been eliminated since fees will only be charged for applications and section 4 exemptions.

(6) Mr. Rutledge notes several points together concerning whether the fee is a capital expenditure, credit for fees already paid, refunds, and maximum fees. These points have been addressed above.

(7) Finally, Mr. Rutledge argues that the penalties mentioned in section 9 are too severe and that criteria for their imposition is not given. Section 9 serves only to remind entities that the penalty provisions exist. Procedural rules are not the proper vehicle to discuss the basis for potential liability. Such questions should be reviewed in light of the statutory provisions and the existing legislative rules.

At the July 20, 1987, public hearing several individuals appeared and read their written statements into the record. Since those written statements have been responded to above, additional response will not now be made. One additional individual spoke without offering written comments.

J. Princeton Community Hospital -- by William L. Sheppard.

(1) Initially, Mr. Sheppard stated that the hospitals are already assessed for the Authority's general funds and that an additional fee should not be imposed on them. This point has been addressed earlier.

(2) Mr. Sheppard also suggested that small hospitals should be charged at a flat rate \$25.00. While the Authority agrees that hospital's which are struggling financially should receive a waiver -- and has provided section 5 to that effect -- merely because a hospital is small is not a sufficient basis for a waiver of fees. It is quite possible for a hospital to be small, but financially well-off.

(3) Finally, Mr. Sheppard suggested that the fees be reduced. This point has been addressed previously.

In order to make the changes discussed above, the Authority substantially restructured the proposed rule and added several sections. The main purpose of the rule was not changed. However, because of this substantial rewriting, the filing of a copy of the rule with strike-throughs showing deleted language and underlining showing new language was not feasible.

JHK/jmh

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, 1987, and ending with the issue of the 19th day of June, 1987, 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 9th day of June, 1987

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-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 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. Follo, 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

Mickey Carlock, Classified
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 and ending on the 19 day of June
1987

I also certify that the same was duly posted on the 19 day
of June 87, 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, 1987

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

Subscribed and sworn to before me this 23 day of June 1987

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

My commission expires on the 12 day of March 1996

OFFICIAL SEAL
NOTARY PUBLIC,
STATE OF WEST VIRGINIA
SCADON LYNN DOYLE
818 Marlinton Ave.
STAR CITY, W.VA. 26005
My Commission Expires March 12, 1996

0021886

June 15

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

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 subsequent publication on 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

Notary Public for Wood County, West Virginia
7-21-92

My commission expires

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 S. Folio, Executive Director, at the Authority's address or by telephoning (304) 343-3701.
WALTER J. DALE
Chairman

June 19

N

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

Subscribed and sworn to before me this 25th day of
JUNE 19 87.

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, 5 16-2D-6(b), 5 16-
29B-4, and 5 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-5, 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. Pallo, Execu-
 tive Director, at the Authority's
 address or by telephoning (304)

343-3701.

WALTER J DALE
 Chairman

6/19/87

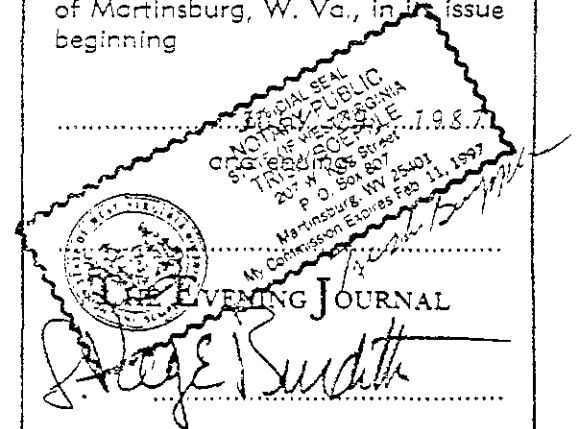
HEALTH CARE COST REVIEW
 AUTHORITY
 1987 JUN 23 AM 11:44
 RECEIVED

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



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-8(b), §16-2D-9, 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 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

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, ~~once a week for minimum 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.

Fay Lovejoy
Taken, subscribed and sworn to before me in my said county this 19th day of June, 1987
My commission expires 4-2-92

Quidell D. Rowles
Notary Public
Cabell County,
West Virginia

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

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

I, Walter D. Detrick, 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. Detrick

Publisher

Publisher's Fee \$ 14.01

TO WHOM IT MAY CONCERN:

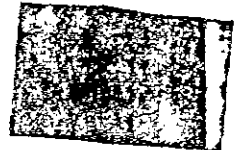
Walter J. Dale, Chairman, West Virginia Health Care Cost Review Authority, hereby gives notice pursuant to West Virginia Code, S 16-2D-8(b), S 16-29B-8, and S 29A-3-5, that the Health Care Cost Review Authority at its June 15, 1987, meeting promulgated proposed procedural rules for the Certificate of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

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

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, 16-2D-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 - 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. Fazio, Executive Director, at the Authority's address or by telephoning (304) 343-3701.

WALTER J. DALE
CHAIRMAN
HEALTH CARE COST REVIEW AUTHORITY

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

Form CA-14 E

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 news-paper published at Elkins, in said county, do hereby certify that the annexed advertisement was published on the following dates:

June 19

19 87 as required by law.

Given under my hand this 19 day of June 19 87

Charles R. Olson
Publisher

Printer's Fee: \$ 14.44

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

Walter J. Dale
Notary Public

My Commission Expires the 24 day of April 19 94

TO WHOM IT MAY CONCERN:

Walter J. Dale, Chairman, West Virginia Health Care Cost Review Authority, hereby gives notice pursuant to West Virginia Code, §2-2D-8(b), 16-29B-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 Rules 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. Folio, Executive Director, at the Authority's address or by telephone (800)343-3701.

WALTER J. DALE
Chairman

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 for1..... successive times on the following dates ..June 19, 1987.....

Given under my hand this24th..... day ofJune....., 19 87.....

Celia Bailey
..... Classified Manager

State of West Virginia)

County of Logan) to wit:

Subscribed and sworn to before me this24th..... day ofJune....., 19 87.....

My Commission expires June 6, 1993.

Hamberly 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), 16-2D-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. Fofio, 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, \$ 1485

**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 Dae 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

6-13-1t

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~~ ⁱⁿ 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 Colley Notary Public.
My Commission expires *February 21, 1989*

CLASS: 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 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'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
4-19-87

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 on 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

Shirley S. Board
Notary Public in Marion County, West Virginia

CLASS I
LEGAL NOTICE
TO WHOM IT MAY
CONCERN:
Walter J. Dale, Chairman, West Virginia Health Care Review Authority, hereby gives notice pursuant to West Virginia Code, § 16-2D-8(B), 5, 16-29B-8, and § 29A-3-5, that the Health Care Cost Review Authority of its June 15, 1987, proposed procedural rules for the Central Office of Need Estimate for the State of West Virginia, Certificate of Need for Medical Facilities, filed pursuant to the 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. on 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 received at the Authority's office 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 telephoning (304) 343 3701.
Walter J. Dale
Chairman
Times: June 19, 1987

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

LEGAL NOTICE
 TO WHOM IT MAY CONCERN,
 Walter J. Dale, Chair-
 man, West Virginia Health
 Care Cost Review
 Authority, hereby gives
 notice pursuant to West
 Virginia Code, 16-20-4(b),
 16-20-5, and 16-20-6, that
 the Health Care Cost
 Review Authority at its
 June 15, 1987, meeting
 promulgated proposed
 procedural rules for the
 Certificate of Need
 Program - titled "Rate
 Schedule for Certificate of
 Need Matters" - and for
 the rate review program -
 titled "Procedural Rule
 For Review of 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
 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 office by July
 27, 1987, to be included in
 the record.
 For additional infor-
 mation, contact Samuel
 B. Polio, Executive
 Director, at the Authority's
 address or by telephoning
 (204) 344-7711.
 WALTER J. DALE
 Chairman
 6-1-87

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 Reynolds
 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.....

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

..... *D. H. Corcoran*
Editor and Publisher

Superior-Welch XD759-6

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-1, 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 208, 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 S. Fallo, Executive Director, at the Authority's address or by telephoning (304) 343-3701.

WALTER J. DALE
Chairman

6-18 ltc

State of West Virginia, Mingo County, to-wit:

I, Louis P. Harvath III, Publisher of the WILLIAMSON DAILY NEWS, Inc., a paper published in the County aforesaid, do swear, 1987 that the Request for hospital rate change HEAL

_____ hereto attached was published in said paper for one time successive weeks, the first publication thereof being on the 19th day of June 19 87, and subsequent publication on the _____ day of _____ 19_____, the _____ day of _____ 19_____, the _____ day of _____ 19_____, and the _____ day of _____ 19_____.

Louis P. Harvath III
Publisher

State of West Virginia, Mingo County, to-wit:

_____ being duly sworn, says that he posted a copy of the annexed _____ at the front door of the Court House of said County, on the _____ day of _____ 19_____.

Taken, subscribed and sworn to before me, this 19th day of June 19 87. Printer's Fees \$ 15.93

Sandra P. Criddle
Notary Public for Mingo County

My Commission expires _____ My Commission Expires August 20, 1992

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, S 16-2D-8(b), S 16-29B-3, 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 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
6.19

THE West Virginia Daily News

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

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

Certificate Of Publication

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(6), 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, entitled "Fee Scheduling For Certificate of Need Matters," and for the rate review program, entitled "Procedural Rules for Receipts 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 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 B. Folio, Executive Director, at the Authority's address, or by telephoning (304) 343-3701.

Walter J. Dale
Chairman
(June 1987)

STATE OF WEST VIRGINIA,

COUNTY OF GREENBRIER, ss:

I, Mary Folio, 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 one (1)

issues of said newspaper, dated June 19 1987

Given under my hand this 19 day of

June, 1987

Mary Folio
Editor or Publisher

13.50
Publication Fee

Subscribed and Sworn to before me this 19th day of June, 1987

My commission expires June 11, 1988
[Signature]
Notary Public

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 annexed 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 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 a.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 hearings. 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. Follis, Executive Director, at the Authority's address or by telephoning (304)343-3701.
 WALTER J. DALE
 Chairman
 6-19-FN-1-RH



(304) 845-2660
PO BOX 369
MOUNDSVILLE
WV 26041

FED. ID NO. 55-0385-0173
-Attach clipping of ad here, permanently-

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:

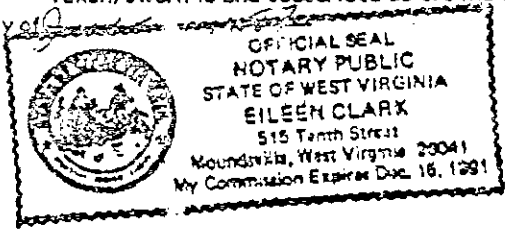
TIMES	DATES
1	June 19, 1987

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 June, 1987



Lester 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, +18-2D-8(b), ;18-29B-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 Suit. 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

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 14-20-8(b), Section 24-2-28-8, 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 Actions" - 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

Intell: 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

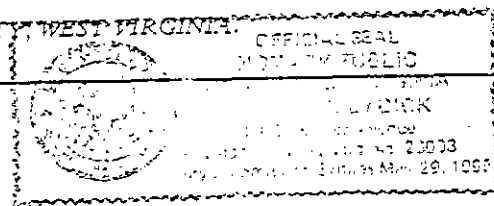
Given under my hand this 19th day of June, 19 87
Linda Miller

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 19 87

Publication Fee \$18.69

Charlotte Beckner

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

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."
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 Dce 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

FILED
1987 AUG 17 AM 9 29

HEALTH CARE COST REVIEW AUTHORITY

SECRETARY OF STATE

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 16-2D-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.

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.

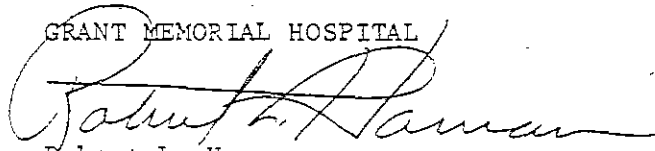
I am also concerned about the use of the market basket measure provided by Data Resources, Inc. as the indices against which proposed hospital rate changes for inflation would be measured. In my discussion with Legislators from this area, it did not appear to be their intent to use this unit of measure 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 Rules, 16-29B, Series 3
Procedural Rules for Requests for Hospital Rate Changes


Dear Mr. Dale:

I am writing to take specific exception to the proposed inflation index to be used to determine whether or not a hospital's proposed rate change must be granted because the proposed increase is consistent with the national rate of hospital inflation.

While recognizing that the reference in the 1987 legislation is in error because it refers to the "hospital market basket component" and not the "hospital component" of the CPI, the legislation does refer specifically to the CPI "as published by the Bureau of Labor Statistics". While the HCCRA had to deal with the misstatement in the legislation, it is unreasonable that it abandoned the readily identified hospital component of the CPI published by the Bureau of Labor Statistics and instead opted to use an index generated by a private organization such as Data Resources, Inc. It appears to be no accident that HCCRA chose the DRI index because it consistently is lower than the hospital component of the CPI. The intent of the HCCRA appears to be to minimize the relief which the legislature intended hospitals to get.

Thank you for your consideration of my comments.

Sincerely,


Dennis P. Bridgeman
Interim Administrator

DPB:glt



HOUSE OF DELEGATES
WEST VIRGINIA LEGISLATURE
STATE CAPITOL — PHONE (304) 348-3436
CHARLESTON 25305

BOB ASHLEY
P. O. BOX 823
SPENCER, WV 25276
PHONE (304) 927-2175

Committees:
Banking & Insurance
Enrolled Bills
Government Organization
Health & Welfare

July 18, 1987

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

Dear Walter,

Recently I had the opportunity to review some of the new rules and regulations that the Health Care Cost Review Authority has implemented based on the House Bill that was passed in the 1987 Legislative session. I am concerned that the legislative intent is not being followed. I am unable to attend the July 20, 1987 public hearing but I do want to have an opportunity to discuss this with you.

I am watching many of the small rural hospitals that were once very profitable now fighting for survival because I believe there is too much regulation.

I want the Authority to re-examine legislative intent and review Data's Resources, Inc. market basket as the trigger for rate review, it is not what we directed in the House Bill 2342.

Please let us work together to solve the problems before the 1988 legislative session.

Respectfully,



Bob Ashley

cc Governor Arch Moore



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 and questions on the proposed procedural rules for the Certificate of Need Program titled "Procedural Rule for Requests for Hospital Rate Changes" are hereby submitted by St. Joseph's Hospital of Parkersburg for inclusion in the record of the Authority.

1) Under what circumstances are the penalties discussed in Subsection 5.9 applicable? How can a hospital, acting in good faith, avoid criminal and civil penalties? What procedure should be followed if the hospital actually experiences gross inpatient revenues per discharge greater than the amount anticipated or greater than the rate of inflation?

2) What is the rationale for not making Section 5 applicable to outpatient and nonpatient revenues?

3) Under what circumstances will the compliance reports discussed in Section 11 be required? Such circumstances should be clearly defined.

4) It is our contention that the use of the Data Resources, Inc. market basket measure to determine the applicable rate of inflation for the hospital industry is contrary to the intent of the Legislature. Specific references in the statute indicate that the Legislature favored the use of the hospital component of the Consumer Price Index in determining the applicable rate of inflation for the hospital industry.

Thank you for your consideration.

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.

RATES

United Hospital Center's concern with the proposed rules for hospital rate changes is focused on HCCRA's use of the Data Resources, Inc. market basket indicator, a measure specifically rejected by the legislative conferees during the last legislative session.

The difference between the HCCRA's 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 believes the use of the DRI as the measure violates the intent of the statute.

Irene M. Keelley
Attorney for United
Hospital Center, Inc.



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:
REQUESTS FOR HOSPITAL RATE CHANGES

WEST VIRGINIA HOSPITAL ASSOCIATION

JULY 20, 1987

The West Virginia Hospital Association is pleased, on behalf of its member hospitals to provide the following written comments relating to the proposed procedural rule issued by the Health Care Cost Review Authority entitled: "Procedural Rule For Requests For Hospital Rate Changes."

Section 4: Permanent changes in the schedule of rates.

Subsection 4.4 indicates that staff of the Health Care Cost Review Authority (hereinafter, referred to as "HCCRA" or "the Agency") will submit to the board "a proposed gross revenue limit and gross patient revenue limit for that hospital." This staff action follows the receipt by the agency of an application and proposed budget by the hospital. The Board of HCCRA then issues an interim order establishing revenue. At no time is the hospital given an opportunity to comment upon the recommendations of the staff and actions of the board prior to issuance of an interim order. The hospital is simply informed, by receipt of the interim order that information necessary to file a revised proposed budget and schedule of rates which shall be drafted in accordance with revenue limits set in the interim order.

It is respectfully suggested that at the time of the staff submission of its recommendations to the Board, hospital applicants be given a 14-day review and comment period relating to staff recommendations for proposed gross revenue limits and gross patient revenue limits. In this way the HCCRA board members are afforded the perspective of the hospital for their possible consideration prior to the issuance of an interim order.

Accordingly, we recommend that the language of subsection 4.4 be changed in part to read as follows:

4.4 Review by the Board - upon receipt. . . and any interested persons. At the same time that the staff of the authority submits to the board a proposed revenue limit described above in this subsection, the agency shall mail to the

hospital applicant a full and complete copy of staff recommendations, first class mail, postage prepaid, return receipt requested. The hospital shall have fourteen working days from date of receipt to submit written comment to the HCCRA Board responding to staff recommendations. The date of receipt, if a working day or the first working day thereafter will begin the fourteen day hospital comment period. Thereafter, the board shall issue an interim order . . ."

A second area of comment in this subsection relates to announcements to the hospital's community of agency actions through the news media. It is suggested that hospitals should be afforded the knowledge of actions by the agency prior to the news media. 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 subsequent questions from the news media. Historically, hospital officials have first learned of agency action not from the agency itself, but from the media. As a matter of courtesy, the hospital should receive a twenty-four hour advance notice of agency action. The hospital is then in a better position to converse with the media and other interested community members in an intelligent manner.

Sub-section 4.7 Notice to the community.

It is recommended that the agency allow any person to inspect the hospital application and proposed budget during the normal working hours of the agency (a continuation of past practice). In order to preclude the disruption of hospital services, applicants should not have to allow inspection of applications and proposed budgets at the hospital. This inspection should occur at the agency offices.

Subsection 4.8 Reconsideration

It is agreed that a hospital should be required to state the grounds for reconsideration. It is suggested, however, that the agency should likewise be required to clearly indicate its reasons for approving or denying the request for reconsideration of any disputed order. Accordingly, the following language is suggested as an addition to this subsection, beginning at the end of the last sentence:

"The agency shall clearly articulate the criteria employed in reaching their result in any reconsideration request."

Section 5 Rate of Inflation Increases

Subsection 5.5 indicates that the applicable rate of inflation for the hospital industry shall be determined by "referring to the most recent national forecasts of inflation . . . as published by Data Resources, Inc., located in Washington, D.C." In light of intensive discussion by House and Senate Conferees during the enactment of the statute, it is suggested that an index provided by Data Resources, Inc., is inappropriate and not within the scope of legislative intent. The specific measurement which was agreed upon was the expenditure category entitled, "Hospital and Other Medical Services Relating to the Percent Changes in the Consumer Price Index for All Urban Consumers, which is published monthly by the Bureau of Labor Statistics on an annualized basis. The hospital and other medical services component is described in Attachment I to these comments. Attachments II and III depict actual CPI information published by the Bureau of Labor Statistics relating to this measurement. Attachment IV gives monthly release dates established by the Bureau.

The data as formulated by Data Resources, Inc., understates the rate of inflation for hospitals nationally. Focusing only upon operating costs, the index is not in conformance with legislative intent. As two examples, it excludes the cost of capital for hospitals. Additionally, Data Resources

recently developed an occupational wage index which is part of its measurement. Significantly 75% of this wage index does not contain wages for hospital personnel. In sum, information from Data Resources, Inc., does not accurately reflect the rate of inflation for the hospital industry nationally in conformance with the statute. As such, it should not be used to measure the rate of inflation for the hospital industry nationally.

Section 5.8 Outpatient or nonpatient revenues

Section 5.8 literally applied precludes the ability of the hospital to adjust outpatient revenues and other nonoperating revenues based upon the rate of inflation for hospitals nationally. As applied, the proposed rule is beyond the intent of the statute (§16-29-B-20(j)). 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 the statute is:

"all requests for rate increases by hospitals . . ." and not reference to "inpatient revenues per discharge," as the latter language is intended solely to initiate the change in rates, and not to restrict such changes to inpatient activity.

Additionally, hospitals are required by federal regulation to conform to comparability of charges. Hospitals may not normally assign different charges for identical procedures performed on an outpatient basis from its charge on an inpatient basis. It is therefore respectfully suggested that Subsection 5.8 be withdrawn in its entirety.

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

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

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, severity of illnesses, unforeseen events. In spite of the difficulty of such forecasts, Subsection 5.9 of the proposed procedural rules then refers to criminal provisions of the West Virginia Code. It is well settled under West Virginia law that no procedural rule may be used to inflict penalties and criminal provisions upon those entities regulated. A second objection to this Subsection is that in addition to its punitive intent, the Subsection does not articulate the criteria employed by the agency in determining when HCCRA will attempt to penalize the hospital including

refunds and temporary rate decreases or criminal penalties contained in §16-29B-27. 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 possible criminal penalties are clearly not the answer.

For all of the above reasons, it is suggested that Subsection 5.9 be withdrawn in its entirety and that it be re-drafted in accordance with these comments and be formulated as a proposed legislative rule.

The West Virginia Hospital Association again wishes to express its thankfulness for the opportunity to provide these comments.

Sincerely,

Ken Rutledge

WEST VIRGINIA HOSPITAL ASSOCIATION

ATTACHMENT #1: DEFINITIONS OF HOSPITAL EXPENDITURE CATEGORIES

Hospital and related services = sum of a + b + c

- a. Hospital rooms. The BLS definition is "Includes out-of-pocket expense for hospital room (accomodation) including board for inpatient hospital care and billed by the hospital." The room rate includes services, supplies, and equipment that are integral to hospital room accomodations. Optional services, such as television sets, are subtracted out.
- b. Other inpatient hospital services. The BLS definition is "Includes expenses for all services (other than accommodations) billed by the hospital for an inpatient in the hospital." Fees for physicians who are salaried by the hospital are included, but fees for attending physicians not salaried by the hospital are excluded. This category includes both hospital and nursing home services, although nursing home care is a small proportion of the total. (Twenty-two nursing homes are surveyed with only one to two prices quoted from each site; about 325 hospitals are surveyed with three to four prices quoted from each site. Prices for hospital services, then, account for about 96% to 97% of this category. Note: Surveyors collect more price data than is "quoted" because prices must be adjusted to reflect comparable services.)
- The pre-1987 CPI category called Other Hospital and Medical Care Services also included emergency department care, but emergency department care is now included in the new category called Hospital Outpatient Services. (See attached table.) The Other Inpatient Hospital Services category includes prices of services in 10 areas of the hospital: anesthesia, surgical suites/other treatment centers, radiology, pharmacy, clinical laboratgories, neurology/cardiology, nuclear medicine, blood bank, physical therapy, and respiratory therapy.
- c. Hospital outpatient services. The BLS definition is "Includes expenses for all outpatient hospital services. Patients receiving outpatient services are not admitted to the hospital." The services that are priced are services in outpatient treatment centers, radiology, clinical laboratories, neurology/cardiology, nuclear medicine, blood banks, physical therapy, respiratory therapy, and emergency departments.

FOR TECHNICAL INFORMATION
 Patrick C. Jackman (202) 272-5160 USDL-87-28
 FOR CURRENT AND HISTORICAL 272-5064 TRANSMISSION OF MATERIAL IN THIS RELEASE
 INFORMATION: (202) 523-1221 IS EMBARGOED UNTIL 8:30 A.M. (EST)
 523-1208 Wednesday, January 21, 1987
 MEDIA CONTACT: 523-1913

NOTE: Beginning next month with release of the Consumer Price Index (CPI) for January 1987, the Bureau of Labor Statistics will introduce revised versions of the current CPIs both for All Urban Consumers and for Urban Wage Earners and Clerical Workers. The revised CPIs will reflect updated patterns of consumer spending and will incorporate a number of technical improvements. Additional technical improvements are scheduled for introduction over the next 2 years. See page 5 for further details.

THE CONSUMER PRICE INDEX--December 1986

The Consumer Price Index for All Urban Consumers (CPI-U) rose 0.1 percent before seasonal adjustment in December to a level of 331.1 (1967=100), the Bureau of Labor Statistics of the U.S. Department of Labor reported today. For the 12-month period ended in December, the CPI-U has increased 1.1 percent.

The Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) also rose 0.1 percent in December, prior to seasonal adjustment. The December 1986 CPI-W level of 325.7 (1967=100) was 0.7 percent higher than the index in December 1985.

CPI for All Urban Consumers (CPI-U)

On a seasonally adjusted basis, the CPI-U rose 0.2 percent in December, about the same as in other recent months. In December, prices for food and most automotive expenses, other than gasoline, rose less than in the previous month. This moderation was essentially offset by a turnaround in prices for energy and household furnishings and operations and a larger increase in the index for medical care.

Table A. Percent Changes in CPI for All Urban Consumers (CPI-U)

Expenditure category	Seasonally adjusted												Unadjusted	
	Changes from preceding month												Compound annual rate	12-mos.
	1986												3-mos. ended	ended
	June	July	Aug.	Sep.	Oct.	Nov.	Dec.	1986	Dec. '86	Dec. '86				

ALL ITEMS	.5	0	.2	.3	.2	.3	.2	.3	.2	.2	2.7	1.1
Food and beverages	.1	.8	.9	.4	.3	.5	.2	.5	.2	.1	4.1	3.7
Housing	.5	0	.2	.2	.0	-.1	.3	.2	.3	.3	.8	1.8
Apparel and upkeep	-.3	.2	.7	.8	.2	.2	0	.2	0	1.7	.9	

Attachment II

TABLE 5. Consumer Price Index for all urban consumers: Nonfood and food (Continued)

	Nonfood Index base	Unadjusted Indexes Nov. 1986	Unadjusted Indexes Dec. 1986	Unadjusted percent change to Dec. 1986 from Dec. 1985	Seasonally adjusted percent change from Sept. to Oct.	Seasonally adjusted percent change from Oct. to Nov.	Seasonally adjusted percent change from Nov. to Dec.	otherwise
Medical care	12/77	444.6	446.8	7.7	0.5	0.6	0.4	0.7
Medical care commodities	12/77	276.2	280.8	6.8	.9	.3	.3	1.1
Prescription drugs	12/77	285.9	288.2	9.0	.8	.3	.6	.9
Anti-infective drugs 1/ 2/.....	12/77	193.8	195.0	6.0	.6	.2	.8	.6
Tranquillizers and sedatives 2/.....	12/77	268.3	272.5	13.2	1.6	.1	1.2	1.8
Circulatories and diuretics 1/ 2/.....	12/77	210.8	213.0	10.8	1.0	.4	.2	1.0
Hormones, diabetic drugs, biologicals, and prescription medical supplies 2/.....	12/77	261.0	262.3	7.8	.5	.4	-.1	.4
Pain and symptom control drugs 1/ 2/.....	12/77	226.3	227.3	7.6	.4	.0	.6	.4
Supplements, cough and cold preparations, and respiratory agents 2/.....	12/77	209.3	210.2	8.7	.4	1.2	.6	.6
Nonprescription drugs and medical supplies 1/ 3/.....	12/77	180.4	182.3	4.6	1.1	.2	-.1	1.1
Eyeglasses 1/ 2/.....	12/77	152.0	153.4	4.1	.9	.4	.4	.9
Internal and respiratory over-the-counter drugs 1/.....	12/77	296.8	300.9	5.0	1.4	.1	-.3	1.4
Nonprescription medical equipment and supplies 1/.....	12/77	173.3	173.9	4.1	.3	.5	-.2	.3
Medical care services	12/77	481.5	483.4	7.9	.4	.6	.4	.7
Professional services	12/77	399.8	401.0	6.3	.3	.5	.6	.5
Physicians' services	12/77	439.7	441.9	7.8	.5	.5	.9	.7
Dental services 1/.....	12/77	374.6	375.2	5.5	.2	.5	.1	.2
Other professional services 1/ 2/.....	12/77	181.5	181.6	2.8	.1	.2	.0	.1
Other medical care services 2/.....	12/77	580.3	583.0	9.3	.5	.7	.4	.8
Hospital and other medical services 2/.....	12/77	243.8	245.0	7.2	.5	.7	.2	.9
Hospital room	12/77	774.8	779.7	7.7	.6	.6	.8	1.1
Other hospital and medical care services 2/.....	12/77	240.1	241.0	6.8	.4	.8	-.1	.5

See footnotes at end of table.

Attachment II

Table 4. Consumer Price Index for All Urban Consumers Detailed expenditure categories, U.S. city average--Continued
(1967=100, unless otherwise noted)

Item and group	Other index base	Unadjusted indexes		Unadjusted percent change to May 1987 from May 1986	Unadjusted percent change to Apr. 1987 from Apr. 1987	Seasonally adjusted percent change from--		
		Apr. 1987	May 1987			Feb. to Mar.	Mar. to Apr.	Apr. to May
Medical care		457.3	450.9	6.8	0.3	0.4	0.6	0.6
Medical care commodities		287.5	289.6	6.4	.7	.6	.2	.6
Prescription drugs		296.2	298.6	8.0	.8	.7	.3	1.0
Nonprescription drugs and medical supplies Δ /	12/86	101.7	102.3	-	.6	.8	.0	.6
Internal and respiratory over-the-counter drugs Δ /								
Nonprescription medical equipment and supplies Δ /		305.8	307.5	4.2	.6	1.1	-.4	.6
Medical care services	12/77	177.0	178.1	3.8	.6	.5	.6	.6
Professional medical services		494.7	496.0	6.9	.3	.4	.7	.6
Physicians' services		412.5	413.9	6.6	.3	.5	.8	.4
Dental services Δ /		453.7	455.1	7.2	.3	.5	.8	.4
Eye care Δ /		388.1	389.9	6.0	.5	.8	.9	.5
Services by other medical professionals Δ /	12/86	102.9	103.1	-	.2	.6	.9	.2
Hospital and related services	12/86	101.7	101.9	-	.2	.8	.2	.2
Hospital rooms		250.1	251.0	7.1	.4	.6	.7	.8
Other inpatient services Δ /		797.1	798.0	7.4	.2	.5	.9	.6
Outpatient services Δ /	12/86	102.1	102.8	-	.7	.2	.6	.7
Entertainment		101.7	101.8	-	.1	.5	.1	.1
Entertainment commodities		281.3	282.0	3.3	.2	.4	.6	.3
Entertainment materials Δ /		270.8	271.7	2.4	.3	.7	.3	.4
Newspapers Δ /	12/77	188.0	187.9	3.2	-.1	.3	.6	.4
Magazines, periodicals, and books Δ /		352.3	354.0	4.0	.5	.3	.6	.5
Sporting goods and equipment	12/77	198.1	197.0	2.4	-.6	.3	.6	.5
Sport vehicles, including bicycles Δ /	12/77	139.6	140.4	.4	.6	.4	.6	-.6
Other sporting goods Δ /	12/77	145.1	145.7	.1	.4	.4	-.3	1.2
Toys, hobbies, and other entertainment	12/77	126.1	127.0	2.4	.7	1.3	-.5	.4
Toys, hobbies, and music equipment	12/77	149.3	150.1	3.1	.5	1.0	-.1	.7
Photographic supplies and equipment	12/77	142.4	144.3	2.9	1.3	1.7	.3	.5
Pet supplies and expense Δ /	12/77	151.0	151.4	7.2	.3	.7	.0	1.3
Entertainment services Δ /	12/77	162.0	161.5	2.0	-.3	.0	1.1	.1
Club memberships Δ /		296.6	297.2	4.6	.2	.0	.2	-.3
Fees for participant sports, excluding club memberships Δ /	12/86	100.7	100.8	-	.1	.5	.0	.2
Admissions Δ /	12/86	103.3	103.7	-	.4	1.0	1.3	.4
Fees for lessons or instructions Δ /	12/77	175.9	175.8	4.6	-.1	-.3	1.2	-.1
Other entertainment services Δ /	12/86	100.6	101.0	-	.4	.0	.2	.4
Other entertainment services Δ /	12/86	101.3	101.6	-	.3	-.2	.6	.3

See footnotes at end of table.

Attachment B III

1987 CPI RELEASE DATES

CPI RELEASE DATES

DATA RELEASED

January 21, 1987

December 1985

February 27, 1987

January 1986

March 27, 1987

February 1986

April 24, 1987

March 1986

May 22, 1987

April 1986

June 23, 1987

May 1986

July 22, 1987

June 1986

August 21, 1987

July 1986

September 23, 1987

August 1986

October 23, 1987

September 1986

November 20, 1987

October 1986

December 18, 1987

November 1986

Attachment IV

WEST VIRGINIA HEALTH CARE COST REVIEW AUTHORITY

IN RE: Board Meeting

RECEIVED
1987 JUL 27 AM 11:08
HEALTH CARE COST REVIEW
AUTHORITY

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 XStatements 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,

Board Meeting

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

Board Meeting

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 Meeting

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.

Board Meeting

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

Board Meeting

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

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

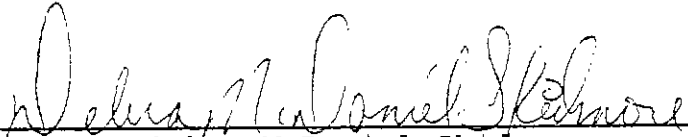
STATE OF WEST VIRGINIA,

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

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



Arch A. Moore, Jr.
Governor

STATE OF WEST VIRGINIA
HEALTH CARE COST REVIEW AUTHORITY

Walter J. Dale
Chairman

Board Members
Larry C. Fizer
Don M. Keesling

June 15, 1987

CERTIFIED MAIL

Dr. Otis R. Bowen
Secretary
United States Department of
Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Dr. Bowen:

Re: West Virginia Procedural Rule: Fee Schedule
for Certificate of Need Matters

Pursuant to West Virginia Code, § 16-2D-8(b)(3), we are required to send to you any proposed regulations for the West Virginia Certificate of Need Program. Enclosed herewith, please find a copy of the above noted rules which we are distributing for public comment.

We have a public hearing scheduled for July 20, 1987, on these procedural rules and comments may be given to us in either oral form at the public hearing or by mailing copies of written comments to us by the date of the hearing.

We invite you and your agency to make such comments on these rules as you believe appropriate.

Sincerely,

WALTER J. DALE
Chairman

WJD/JHK/jmh

Enclosure

P-606 203 621

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

U.S.G.P.O. 153-506
PS Form 3600, June 1985

Sent to	
Dr. Otis R. Bowen	
Secretary	
United States Department of	
Health & Human Services	
200 Independence Avenue, S.W.	
Washington, D.C. 20201 39	
Certified Fee	
Special Delivery Fee	1.5
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	70
Return Receipt showing to whom, Date and Address of Delivery	
TOTAL Postage and Fees	\$ 1.84
Postmark or Date	
Regulations 4/18/87	

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. <input type="checkbox"/> Show to whom delivered, date, and addressee's address.		2. <input type="checkbox"/> Restricted Delivery.	
3. Article Addressed to: Dr. Otis R. Bowen Secretary United States Department of Health & Human Services 200 Independence Avenue, S.W. Washington, D.C. 20201		4. Article Number CP 606 203 621 Type of Service <input checked="" type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> COD	
5. Signature - Addressee X		8. Addressee's Address (ONLY if requested and fee paid)	
6. Signature - Agent X M. Kephart		Always obtain signature of addressee or agent and DATE DELIVERED.	
7. Date of Delivery 4/18/87			

Form 3811, Feb. 1986

DOMESTIC RETURN RECEIPT