

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

RICHARD S. STEPHENSON
Deputy Secretary of State

Telephone: (304) 345-4000
Corporations: 342-8000



STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

RICH O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

August 18, 1987

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Health Care Cost Review Authority

RULE: New Series, 11 title, Exemptions for Certificate of Need
Review

DATE FILED AS AN EMERGENCY RULE: July 7, 1987

DECISION NO. 17-87

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug 18, 1987
ADMINISTRATIVE LAW DIVISION

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

RICHARD S. STEPHENSON
Deputy Secretary of State

Telephone: (304) 345-4000
Corporations: 342-8000



STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

RICH O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

DECISION

Emergency Rule Decision
(ERD 17-87)

AGENCY: Health Care Cost Review Authority
RULE: New Series 11 titled, Exemptions from Certificate of
Need Review

DATE FILED AS AN EMERGENCY RULE: July 7, 1987

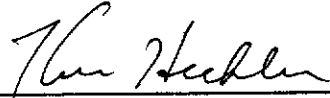
- par. 1 The Health Care Cost Review Authority (HCCRA) has filed as a new series the above titled rule.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

- par. 6 The HCCRA has filed this emergency rule with supporting documents with the Secretary of State on July 7, 1987, and with the LRMRC on July 7, 1987.
- par. 7 It is the determination of the Secretary of State that the HCCRA has complied with the procedural requirements of WV Code §29A-3-15.
- par. 8 (B) Statutory Authority -- WV Code §16-2D-8 reads in part:
§17=2D-8. Agency to promulgate additional rules and regulations.
(a) The state agency is hereby empowered to promulgate additional rules and regulations:
(1) To carry out out the provisions of this article.
- par. 9 Also refer to WV Code §16-2D-4(f)-(i); HB 2342 passed March 14, 1987.
- par. 10 It is the determination of the Secretary of State that the HCCRA has not exceeded its statutory authority in the promulgation of these emergency rules.
- par. 11 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:
(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.
- par. 12 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.
- par. 13 The facts and circumstances as presented by the HCCRA are as follows: §21-3A-7(a).

This emergency legislative rule implements certain of the provisions of Enrolled Committee Substitute For House Bill 2342 which was signed by the Governor. That bill amended West Virginia Code, §16-2D-4, by adding to it four (4) new subsections. Those new subsections authorize the state agency to promulgate rules to exempt from certificate of need review certain activities of health care facilities. In the state agency's opinion, these new exemptions must be implemented immediately so as to prevent substantial harm to the public interest. The state agency concludes that the Legislature intended to alleviate the financial burden on health care

facilities which wish to engage in the specified activities. Delays in implementing this rule would defeat this Legislative purpose by causing the health care facilities to continue to bear this financial burden until the rule receives final legislative approval.

- par. 14 As stated in ERD 16-86, par. 16 and ERD 14-87, par 15, the need to initiate a new statute, particularly one which is to alleviate an economic burden should be held to reflect the public interest.
- par. 15 It is the decision of the Secretary of State that this proposal by the HCCRA is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the HCCRA; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.
- par. 16 This decision shall be cited as Emergency Rule Decision 17-87 or ERD 17-87 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the HCCRA, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

Entered _____

THIS DATE

Aug 18, 1987

ADMINISTRATIVE LAW DIVISION