

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**

Form #1

Do Not Mark In this Box

FILED  
1989 AUG -3 AM 11: 22  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF PUBLIC HEARING ON A PROPOSED RULE**

AGENCY: West Virginia Health Care Cost Review Authority TITLE NUMBER: 65

RULE TYPE: Legislative; CITE AUTHORITY 16-2D-4a; 16-2D-8

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 PROPOSED: 15

TITLE OF RULE BEING PROPOSED: Exemption For Conversion Of Acute  
Care Beds To Skilled Nursing Care Beds

DATE OF PUBLIC HEARING: September 6, 1989 TIME: 2:00 p.m.

LOCATION OF PUBLIC HEARING: Health Care Cost Review Authority  
Large Conference Room  
100 Dee Drive, Suite 201  
Charleston, WV 25311

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Health  
Care Cost Review Authority  
ATTN: Marianne K. Stonestreet  
100 Dee Drive, Suite 201  
Charleston, WV 25311

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

  
LARRY C. FIZER, Chairman

### SUMMARY OF PROPOSED RULE

The proposed legislative rule implements Enrolled Committee Substitute for H. B. 2612 (W. Va. Code 16-2D-4a). The rule creates an exemption from certificate of need review for the conversion of acute care beds to skilled nursing care beds by certain licensed hospitals.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Exemption For Conversion Of Acute Care Beds To Skilled Nursing Care Beds

Type of Rule:  Legislative  Interpretive  Procedural

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

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

2. Explanation of above estimates:

The agency estimates no cost associated with the implementation of this rule.

3. Objectives of these rules:

To implement an exemption from certificate of need review for the conversion of acute care beds to skilled nursing care beds by licensed hospitals as required by W. Va. Code 16-2D-4a.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

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

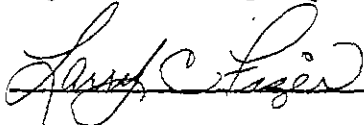
Hospitals affected by this rule should realize a savings by converting underutilized acute care beds to needed skilled nursing care beds.

C. Economic Impact on Citizens/Public at Large.

Citizens and the public should benefit from the cost savings to the hospitals, if the cost savings are reflected in a reduction in hospital rates and charges.

Date: August 3, 1989

Signature of Agency Head or Authorized Representative



LARRY C. FIZER, Chairman

DATE: September 11, 1989

FILED

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

1989 SEP 11 PM 2:44

FROM: West Virginia Health Care Cost Review Authority

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

EMERGENCY RULE TITLE: Exemption For Conversion Of Acute Care Beds  
To Skilled Nursing Care Beds

1. Date of filing: August 3, 1989

2. Statutory authority for promulgating the emergency  
rule: W. Va. Code 16-2D-4a; 16-2D-8

3. Date of filing of proposed legislative rule: Aug. 3, 1989

4. Does the emergency rule adopt new language or does it  
amend or repeal a current legislative rule?

No

5. Has the same or similar emergency rule previously been  
filed and expired?

No

6. State, with particularity, those facts and circumstances  
which make the emergency rule necessary for the immediate  
preservation of public peace, health, safety or welfare.

There is an immediate need for skilled nursing beds and patients in  
need of these services have been retained in an inappropriate level of  
care facility resulting in malutilization of health care facilities and  
resources. There also currently exists a surplus of acute care beds in  
hospitals, particularly in rural areas, and this surplus promotes economic  
inefficiencies in operation while failing to meet community needs. Nursing  
homes are operating under a moratorium and unable to add beds in excess of  
ten percent or not more than 10 beds.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See response to item #6.

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TITLE 65  
WEST VIRGINIA LEGISLATIVE RULE  
HEALTH CARE COST REVIEW AUTHORITY  
SERIES 15

Title:       EXEMPTION FOR CONVERSION OF ACUTE  
              CARE BEDS TO SKILLED NURSING CARE BEDS

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§65-15-1.     General

1.1       Scope - This rule establishes an exemption from certificate of need review for the conversion of acute care beds to skilled nursing care beds by a licensed hospital as provided by W. Va. Code 16-2D-4a.

1.2.       Authority - W. Va. Code 16-2D-4a and 16-2D-8.

1.3.       Filing Date - August 3, 1989.

1.4.       Effective Date - August 3, 1989.

§65-15-2     Introduction

This rule implements Enrolled Committee Substitute for H. B. 2612 which was signed by the Governor. That bill created a new code section, W. Va. Code 16-2D-4a. This new section authorizes the state agency to promulgate rules to exempt from certificate of need review the conversion of acute care beds to skilled nursing care beds by a licensed hospital under certain conditions.

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3.1. Acute-care bed complement - The number of licensed hospital beds designated for acute care services exclusive of SNF and/or ICF long-term care beds and personal care beds.

3.2. Licensed bed capacity - The total number of hospital beds currently authorized for a hospital to operate by the Division of Health and Human Resources.

3.3. Skilled nursing bed - A long-term care bed designated as an SNF (skilled nursing facility bed) and certified as such under Medicare Title XVIII reimbursement.

3.4. Intermediate care bed - A long-term care bed designated as an ICF (intermediate care bed) and certified as such under Medicaid Title XIX reimbursement.

3.5. Dually certified bed - A long-term care bed designated for use as both ICF and SNF and certified as such under Medicare and Medicaid reimbursement.

3.6. Verified notice - A notice containing the information required by this rule which has attached to it a statement made under oath before a notary public or other official entitled to administer oaths by the chief executive officer of the hospital that the facts and circumstances set forth in the notice are true or believed to be true by the chief executive officer.

4.1.      A hospital licensed by the department of health otherwise subject to certificate of need review may obtain an exemption from review for the conversion of acute care beds to skilled nursing care beds if the hospital meets the following conditions:

(a)      It is located in a non-metropolitan statistical area as defined by the bureau of the census of the federal government;

(b)      It has experienced an average occupancy rate of less than fifty (50) percent for the twelve (12) months preceding the date of request for this exemption; and

(c)      The nursing home service area within which the hospital is located is under the bed ceiling as calculated by the thirty (30) beds per thousand population formula as set forth in the long-term care chapter of the state health plan, except for the purposes of this article existing nursing home beds shall be used in the calculation. In determining eligibility pursuant to this requirement, the state agency will determine if the existing nursing home bed supply within the nursing home service area in which the hospital is located exceeds the five-year projected nursing home bed ceiling for that service area. Only licensed beds shall be counted in the nursing home bed supply.

4.2.      The hospital requesting the exemption pursuant to this rule must also meet the following requirements:

(a)      In converting beds, the hospital must change one acute care bed into one skilled nursing care bed;

(b)      All acute care beds converted shall be permanently deleted from the hospital's acute-care bed complement and the hospital may not thereafter

add, by conversion or otherwise, acute-care beds to its bed complement without satisfying the requirements of subsection (d), section three, article two-d, chapter sixteen of the West Virginia Code for which purposes such an addition, whether by conversion or otherwise, shall be considered a substantial change to the bed capacity of the hospital notwithstanding the definition of that term found at subsection (ee), section two, article two-d, chapter sixteen of the West Virginia Code;

(c) The hospital shall meet all applicable federal and state licensing requirements for the provisions of skilled nursing services including a requirement that all skilled care beds created under this exemption shall be located in distinct-part, long-term care units;

(d) No hospital is permitted to convert more than twenty-five (25) percent of its licensed bed capacity in any twenty-four (24) month period pursuant to this exemption; however, in the event that subsection (h), section five, article two-d, chapter sixteen of the West Virginia Code is repealed and to the extent that other methods of converting acute care beds are available under article two-d, chapter sixteen of the West Virginia Code, the hospital may request certificate of need approval of such conversions; and

(e) The hospital may not seek to obtain certification of the skilled nursing beds converted from acute care beds pursuant to this rule as dually certified beds or intermediate care beds.

§65-15-5 Verified Notice, Filing Fee and Review Period

5.1. To request an exemption pursuant to this rule, the hospital must file a verified notice and the current filing fee applicable to exemption requests

pursuant to 65 C.S.R. 10, section 4.1 with the state agency. The verified notice shall include the following information:

(a) A copy of the current hospital license issued by the department of health;

(b) A description of the number and type of acute care beds to be converted to skilled nursing beds; and

(c) A compilation of the number of acute care patient days for each of the twelve (12) months preceding the date of request for this exemption.

5.2. Upon receipt of the verified notice and filing fee, the state agency shall within fifteen (15) days determine whether the proposed conversion of acute care beds is eligible for the exemption. In the event the state agency needs more information to make its determination, it shall request that information in writing. Such request shall terminate the applicable fifteen (15) day review period and a new fifteen (15) day review period shall begin upon receipt by the state agency of the requested information. Submission of incomplete or inadequate additional information shall not cause the new fifteen (15) day review period to begin.

§65-15-6      Substantial Compliance Review

6.1. The hospital shall undergo substantial compliance review of the conversion to skilled nursing beds and submit a progress report to the state agency no later than thirty (30) days after initiation of the service. The following items shall be provided as part of the progress report for substantial compliance review:

(1) Report of capital expenditures associated with the conversion;

(2) Documentation of effective SNF certification date from the department of health; and

(3) Documentation of the licensure and SNF certification approval from the department of health.

6.2. The state agency shall issue a notice of conditional substantial compliance if the information required pursuant to section 6.1 of this rule is submitted and deemed to satisfy the requirements of this rule. Upon receipt of a new hospital license from the department of health each July 1 and subsequent to the implementation of the conversion of acute care beds to skilled nursing beds, the hospital shall submit said license to the state agency and a final order of substantial compliance shall be issued.