

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

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

CITE AUTHORITY: W. Va. Code 16-2D-4a; 16-2D-8

EMERGENCY 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 RULE BEING FILED AS AN EMERGENCY: 15

TITLE OF RULE BEING FILED AS AN EMERGENCY: Exemption For Conversion
Of Acute Care Beds To Skilled Nursing Care Beds

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Enrolled Committee Substitute for H. B. 2612 enacted by the Legislature went into effect July 6, 1989. This law requires the HCCRA to adopt rules to exempt from certificate of need review the conversion of acute care beds to skilled nursing beds by a licensed hospital. The legislative findings and purpose state there is a surplus of acute care beds in hospitals, particularly in rural areas of the state and a need for skilled nursing beds. The excess of acute care beds promotes economic inefficiencies in operation while failing to meet community needs. This rule is necessary to implement this legislation which will promote the health and welfare of the citizens of the state.

Use Additional Sheets If Necessary.


LARRY C. FIZER, Chairman

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.

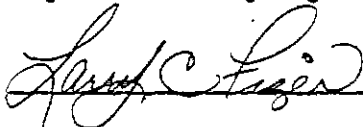
Hospitals affected by this rule should realize a savings by converting underutilized acute care beds to needed skilled nursing care beds.

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

TITLE 65
EMERGENCY
WEST VIRGINIA LEGISLATIVE RULE
HEALTH CARE COST REVIEW AUTHORITY

SERIES 15

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

§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.

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.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
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Special Assistant

(Plus all the volunteer
help we can get)

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE September 14, 1989
ADMINISTRATIVE LAW DIVISION

September 14, 1989

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

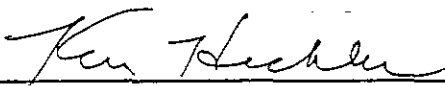
AGENCY: West Virginia Health Care Cost Review Authority

RULE: New Rule, Series 15; Exemption for Conversion of Acute
Care Beds to Skilled Nursing Care Beds

DATE FILED AS AN EMERGENCY RULE: August 3, 1989

DECISION NO. 18-89

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.


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Secretary of State

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DECISION

EMERGENCY RULE DECISION
(ERD 18-89)

AGENCY: West Virginia Health Care Cost Review Authority
RULE: New Rule, Series 15, Exemption for Conversion of Acute
Care Beds to Skilled Nursing Care Beds
FILED AS AN EMERGENCY RULE: August 3, 1989

- par. 1 The Health Care Cost Review Authority (Authority) has filed the above new rules as emergencies.
- 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 emergency rule decision 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 Authority filed this emergency rule with supporting documents with the Secretary of State on August 3, 1989 and with the LRMRC on August 3, 1989.
- par. 7 It is the determination of the Secretary of State that the Authority has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- WV Code §16-2D-8 reads in part:
§16-2D-8. Agency to promulgate additional rules and regulations.
(a) The state agency is hereby empowered to promulgate additional rules and regulations:
(2) All rules and regulations shall be promulgated pursuant to chapter twenty-nine-A (§29A-1-1 et seq.) of this Code and as described herein.
- par. 9 WV Code states in §5F-2-1(d)(9):
(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of health and human resources:
(8) Health care cost review authority provided for in article twenty-nine-b (§16-29B-1 et seq.), chapter sixteen of this code.
- par. 10 §5F-2-2(a)(11) further states:
(11) Promulgate rules, as defined in section two, article one, chapter twenty-nine-a of this code, to implement and make effective the powers, authority and duties granted and imposed by the provisions of this chapter, such promulgation to be in accordance with the provisions of chapter twenty-nine-a of this code.
- par. 11 It is the determination of the Secretary of State that the Authority has not exceeded its statutory authority in promulgating this emergency rule.
- par. 12 (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.

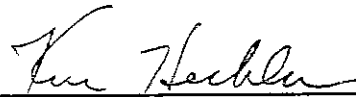
par. 13 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 14 The facts and circumstances as presented by the Department of Transportation are as follows:

Enrolled Committee Substitute for H.B. 2612 enacted by the Legislature went into effect July 6, 1989. This law requires the HCCRA to adopt rules to exempt from certificate of need review the conversion of acute care beds to skilled nursing beds by a licensed hospital. The legislative findings and purpose state that there is a surplus of acute care beds in hospitals, particularly in rural areas of the state and a need for skilled nursing beds. The excess of acute care beds promotes economic inefficiencies in operation while failing to meet community needs. This rule is necessary to implement this legislation which will promote the health and welfare of the citizens of this state.

par. 15 It is the determination of the Secretary of State that this proposal qualifies under the definition of emergency.

par. 16 This decision shall be cited as Emergency Rule Decision 18-89 or ERD 18-89 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 Commission.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE September 14, 1989
ADMINISTRATIVE LAW DIVISION

Entered _____