

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

Form #3

Do Not Mark In this Box

FILED

1989 SEP 11 PM 2:45

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

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

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

AMENDMENT TO AN EXISTING RULE: YES  NO

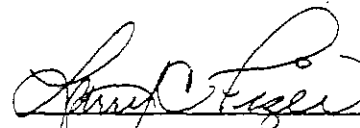
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

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

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
LARRY C. FIZER  
Chairman

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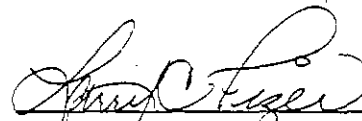
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LARRY C. FIZER  
Chairman

TAUNJA WILLIS MILLER  
SECRETARY  
WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN SERVICES

September 11, 1989

Larry C. Fizer, Chairman  
West Virginia Health Care  
Cost Review Authority  
100 Dee Drive, Suite 201  
Charleston, WV 25311

Dear Mr. Fizer:

Re: HCCRA Proposed Rule: 65-15-1 et seq.

I have carefully reviewed the HCCRA approved proposed rule concerning an exemption from certificate of need review for the conversion of acute care beds to skilled nursing care beds by licensed hospitals and approve the filing of said rule with the Secretary of State and the Legislative Rule-Making Review Committee.

Sincerely,



TAUNJA WILLIS MILLER  
Secretary

TWM/MKS/jmh

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.

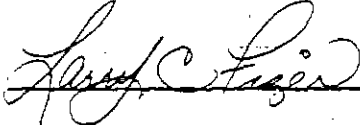
Hospitals affected by this rule should realize a savings by converting underutilized acute care beds to needed skilled nursing care beds.

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 SEP 11 PM 2:45

FROM: West Virginia Health Care Cost Review Authority OFFICE OF WEST VIRGINIA

SECRETARY OF STATE

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

1. Authorizing statute(s) citation \_\_\_\_\_

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

2. a. Date filed in State Register with Notice of Hearing:

August 3, 1989.

b. What other notice, including advertising, did you give of the hearing?

Notice of hearing and copy of rule sent to all persons on

attached list; publication in agency newsletter

c. Date of hearing (s): September 6, 1989, at 2:00 p.m.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received \_\_\_\_\_

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:  
(be exact)

September 11, 1989

f. Name and phone number of agency person to contact for additional information:

Marianne K. Stonestreet

General Counsel

343-3701

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

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 - \_\_\_\_\_.

1.4. Effective Date - \_\_\_\_\_.

§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 ~~D~~ivision of ~~H~~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~~ division 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~~ rule 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~~ division of health; and

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

RECEIVED

30 SEP -7 11:15:29

BEFORE THE WEST VIRGINIA HEALTH CARE COST REVIEW AUTHORITY

In re: Proposed Rule Title 65 Series 15

TRANSCRIPT OF PROCEEDINGS had in the above-styled matter on the 6th day of September, 1989, commencing at 2:15 p.m., at the offices of the West Virginia Health Care Cost Review Authority, Dee Drive, Charleston, West Virginia, before V. Ann Woofler, Certified Reporter.

BEFORE: MARIANNE STONESTREET, Hearing Examiner  
WALTER J. DALE, Board Member  
DON M. KEESLING, Board Member

*Action Court Reporting*

*V. Ann Woofler*

*Post Office Box 4449*

*Charleston, West Virginia 25364*

*304/925-5588*

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4           The purpose of this hearing is to receive public  
5 comment on the Health Care Cost Review Authority's proposed  
6 rule Title 65 Series 15. The Title is the exemption for  
7 conversion of acute care beds to skilled nursing care beds.

8           Present today are Mr. Dale and Mr. Keesling, Members of  
9 the Board; and, also, the Director of our Certificate Of  
10 Need Division, Jill McDaniel; and our two analysts, David  
11 Haden and Linda Dodd.

12           We have received three written comments, and at this  
13 time I would ask if anyone cares to address the Board today.

14           (No response)

15           MS. STONESTREET: There being no one here that  
16 cares to make oral comments, I will conclude this hearing.

17                           (WHEREUPON, the hearing  
18                           was concluded.)  
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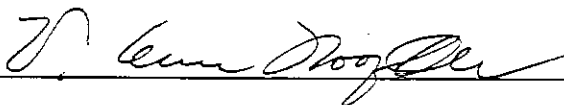
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REPORTER'S CERTIFICATE

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

I, V. Ann Woofter, official reporter for the West Virginia Health Care Cost Review Authority, hereby certify that the foregoing transcript was done to the best of my skill and ability by Stenomask procedure.

Given under my hand this 6th day of September, 1989.



V. ANN WOOFTER, CERTIFIED REPORTER  
NOTARY PUBLIC

My commission expires April 2, 1999.

A.C.R.



Gaston Caperton  
Governor

Taunja Willis Miller  
Secretary

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
HEALTH CARE COST REVIEW AUTHORITY

Larry C. Fizer  
Chairman

Board Members  
Walter J. Dale  
Don M. Keesling

August 4, 1989

(SEE ATTACHED MAILING LIST)

Dear :

The Enrolled Committee Substitute for House Bill (H.B.) 2612 enacted by the Legislature went into effect July 6, 1989. This law requires the Health Care Cost Review Authority (HCCRA) to develop rules to exempt from certificate of need review the conversion of acute care beds to skilled nursing beds by a licensed hospital.

We have completed and adopted the enclosed emergency rule as required in the above. They were filed with the Secretary of State and the Legislative Rule-Making Review Committee on August 3, 1989. A public hearing of this rule will be held **Wednesday, September 6, 1989, at 2:00 p.m.** at our office, 100 Dee Drive, Suite 201, Charleston, West Virginia 25311. If you desire to make comments on this emergency rule, you may submit those in writing prior to the hearing or a presentation may be made at the hearing. Comments will be received up to the conclusion of the hearing.

If you should have any questions or need additional information, do not hesitate to contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Larry C. Fizer".

LARRY C. FIZER  
Chairman

LCF:db

Enclosure

David E. Wilbur  
Acting N.H.A.  
Americare Glenville Nsg. & Rehab. Center  
46 Fairground Road  
Glenville, West Virginia 26351

Mike Anderson, N.H.A.  
Americare Morgantown Nsg. & Rehab. Center  
995 Maple Drive  
Morgantown, West Virginia 26505

Tammy Jo Bowen, Administrator  
Americare Pine Lodge Nsg. & Rehab. Center  
405 Stanford Road  
Beckley, West Virginia 25801

R. K. Cottrill, Administrator  
Americare Salem Nursing & Rehab. Center  
Rt. 2, Box 427  
Salem, West Virginia 26426

Marjorie J. Tullins  
Acting Administrator  
Ansted Health Care Center  
P.O. Box 400  
Ansted, West Virginia 25812

Dora Grisinger, N.H.A.  
Arbors at Fairmont  
130 Kaufman Drive  
Fairmont, West Virginia

Royce Rall, N.H.A.  
Barbour County Good Samaritan Center  
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Belington, West Virginia 26250

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Braxton Health Care Center  
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Sutton, West Virginia 26601

Anthony J. Cooper, N.H.A.  
Care Haven of Berkeley  
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Martinsburg, West Virginia 25401

James O. Strom, N.H.A.  
Care Haven of Raleigh  
P.O. Box HH  
Daniels, West Virginia 25832

Mary Ann Bowry, N.H.A.  
Care Haven of Sistersville  
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Sistersville, West Virginia 26175

Roy Drake, N.H.A.  
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302 Cedar Ridge Road  
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Wanda Lou Rau, Administrator  
Clarksburg Continuous Care Center  
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Clarksburg, West Virginia 26301

Daniel Bucher, N.H.A.  
Cortland Acres Nursing Home  
P.O. Box 98  
Thomas, West Virginia 26292

Jerry Gallien, N.H.A.  
Crestview Manor  
P.O. Box 40  
Jane Lew, West Virginia 26378

James R. Wooddell, Administrator  
Cumberland Care Center, Inc.  
P.O. Box 410  
Bluefield, West Virginia 24701

Evelyn Phelps, Administrator  
Danville-Madison Nursing Home  
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Danville, West Virginia 25053

Darlene Newell, N.H.A.  
Fayette Continuous Care Center  
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Fayetteville, West Virginia 25840

Daniel W. Farley, N.H.A.  
Glenwood Park United Methodist Home  
Route 1, Box 464  
Princeton, West Virginia 24740

Terry Shobe, N.H.A.  
Grant County Nursing Home  
27 Early Avenue  
Petersburg, West Virginia 26847

Rodney Dunn, N.H.A.  
Heartland of Beckley  
300 Dry Hill Road  
Beckley, West Virginia 25801

Robert Pate, N.H.A.  
Heartland of Clarksburg  
100 Parkway Drive  
Clarksburg, West Virginia 26301

Robert E. Baer, N.H.A.  
Heartland of Martinsburg  
210 Clover Street  
Martinsburg, West Virginia 25401

Anna R. Ruckman, N.H.A.  
Heartland of Preston County  
300 Miller Road  
Kingwood, West Virginia 26537

William Stone, N.H.A.  
Heartland of Rainelle  
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Route 3, Box 17  
Bridgeport, West Virginia 26330

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422 - 23rd Street  
Oak Hill, West Virginia 25901

Robert Cempella, Administrator  
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Hilltop, West Virginia 25855

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James S. Hecker, N.H.A.  
Jeffersonian Manor  
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Charles Town, West Virginia 25414

Susan F. Duel, N.H.A.  
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Charles Town, West Virginia 25414

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Logan, West Virginia 25601

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Pocahontas Continuous Care Center  
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James Bryan, N.H.A.  
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St. Barbara's Memorial Nursing Home  
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Monongah, West Virginia 26554

Linda K. Turner, N.H.A.  
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Morgantown, West Virginia 26505

John E. Richards, Jr., N.H.A.  
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Mary Batton, N.H.A.  
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Herman Haupstein, N.H.A.  
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Fairmont, West Virginia 26554

George Haupstein, N.H.A.  
Wishing Well Manor, Inc.  
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Fairmont, West Virginia 26554

Edwin J. Foss  
Executive Vice President  
West Virginia Health Care Association  
1115 Quarrier Street  
Charleston, West Virginia 25301

W. D. Crosley, Administrator  
Beckley Appalachian Regional Hospital  
306 Stanford Road  
Beckley, WV 25801

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Beckley, WV 25801

Jay F. Valeyko, Administrator  
Bluefield Regional Medical Center  
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Bluefield, WV 24701

Tommy H. Mullins, Administrator  
Boone Memorial Hospital  
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Madison, WV 25130

Kenneth Wilson, Administrator  
Braxton County Memorial Hospital  
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Gassaway, WV 26624

Allen D. Retton, Administrator  
Broaddus Hospital  
College Hill  
Philippi, WV 26416

Al Lawson, Administrator  
Calhoun General Hospital  
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Grantsville, WV 26147

Pete Mulford, Administrator  
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Martinsburg, WV 25401

Robert L. Hammer, Chief Executive Officer  
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Gorman and Reed Streets  
Elkins, WV 26241

Richard W. Graham  
Administrator  
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Fairmont, WV 26554

Randy Roberts, Administrator  
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Greg Gibson, Executive Director  
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Ronceverte, WV 24970

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Harry E. Schweinsberg  
Administrator  
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Romney, WV 26757

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Executive Director  
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Ranson, WV 25438

C. David Morrison, Administrator  
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Logan, WV 25601

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Man, WV 25635

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Monongalia General Hospital  
1200 J D Anderson Drive  
Morgantown, WV 26505

Kenneth R. Fultz, Administrator  
Montgomery General Hospital  
Washington & Sixth Avenue  
Montgomery, WV 25136

Charlie Horton, Administrator  
Morgan Co. War Memorial Hospital  
1124 Fairfax Street  
Berkeley Springs, WV 25411

Charles E. Kuebler, Administrator  
Plateau Medical Center  
430 Main Street  
Oak Hill, WV 25901

Michael Sellards, Administrator  
Pleasant Valley Hospital  
Valley Drive  
Point Pleasant, WV 25550

Howard L. Ellis, Administrator  
Pocahontas Memorial Hospital  
103 Eighth Street  
Marlinton, WV 24954

Hilda R. Heady, Administrator  
Preston Memorial Hospital  
300 S. Price Street  
Kingwood, WV 26357

William Sheppard, Administrator  
Princeton Community Hospital  
Twelfth Street  
Princeton, WV 24740

Kenneth M. Holt, Administrator  
Raleigh General Hospital  
1710 Harper Road  
Beckley, WV 25801

David Graham, Administrator  
Roane General Hospital  
200 Hospital Drive  
Spencer, WV 25276

Nunzio P. Pagano, D.C.  
President, Board of Directors  
Richwood Area Medical Center  
P.O. Box 511-Riverside Addition  
Richwood, WV 26261

Robert L. Kunz, Administrator  
Sistersville General Hospital  
314 South Wells Street  
Sistersville, WV 26175

David D. Shaffer, Administrator  
Stonewall Jackson Memorial Hospital  
Route 4, Box 10  
Weston, WV 26452

Austin Edwards  
Executive Director  
Humana Hospital - St. Luke's  
1330 Southview Drive  
Bluefield, WV 24701

Lewis Alley, Administrator  
Summers County Hospital  
P.O. Box 940  
Hinton, WV 25951

Greg Johnson, Administrator  
Summersville Memorial Hospital  
Box 506  
Summersville, WV 26651

Bruce C. Carter, President  
United Hospital Center  
P.O. Box 1680  
Clarksburg, WV 26301

Joe H. Clifton, Administrator  
Webster County Memorial Hospital  
324 Miller Mountain Drive  
Webster Springs, WV 26288

Steve Shride, Administrator  
Welch Emergency Hospital  
454 McDowell Street  
Welch, WV 24801

Daniel C. Dunmyer  
Administrator  
Wetzel County Hospital  
3 East Benjamin Drive  
New Martinsville, WV 26155

Christopher P. O'Connor  
Administrator  
Williamson Memorial Hospital  
P.O. Box 1980  
Williamson, WV 25661

Bernard G. Westfall, President  
WV University Hospitals, Inc.  
Medical Center Drive  
Morgantown, WV 26506

Sister Mary Herbert, S.A.C.  
Administrator  
St. Joseph's Hospital  
Amalia Drive  
Buckhannon, WV 25201



Gaston Caperton  
Governor

Tanjia Willis Miller  
Secretary

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
HEALTH CARE COST REVIEW AUTHORITY

Larry C. Fizer  
Chairman

Board Members  
Walter J. Dale  
Don M. Keesling

MEMORANDUM

TO: Legislative Rule-Making Review Committee

FROM: West Virginia Health Care Cost Review Authority

DATE: September 11, 1989

RE: Brief Summary of Proposed Legislative Rule:  
Exemption For Conversion Of Acute Care Beds To  
Skilled Nursing Beds; and Statement of Circumstances  
Requiring the Rule

The proposed legislative rule permits certain hospitals to convert under-utilized acute care beds to skilled nursing care beds. Pursuant to W. Va. Code 16-2D-4a a hospital may convert acute care beds to skilled nursing beds with no increase in overall bed capacity if the hospital meets the following conditions: (1) It is located in a non-Metropolitan Statistical Area; (2) it has experienced an average occupancy rate of less than 50% for the twelve (12) months preceeding the date of request for the exemption; and (3) the nursing home service area within which the hospital is located is under the bed ceiling.

Enrolled Committee Substitute for H.B. 2612 which was passed by the Legislature on April 7, 1989, created a new Code section, 16-29-4a. This law went into effect on July 6 1989. It requires this agency to adopt rules to exempt from certificate of need review the conversion of acute care beds to skilled nursing care beds by a licensed hospital if the hospital meets the above listed conditions. The legislative findings and purpose contained in W. Va. Code 16-2D-4a(a) state: "A need exists for skilled nursing health care beds ... due to a shortage of existing facilities with adequate bed capacity and lack of willingness to provide such services; that patients in need of skilled nursing services have sometimes been retained in an inappropriate level of care facility; that such practices have resulted in malutilization of health care facilities and resources; that there currently exists a surplus of acute care beds in hospitals, particularly those in rural areas within this state; ... that the ... excess capacity of acute care beds promotes economic inefficiencies and operation while failing to meet community needs; that nursing homes are unable ... to add ... skilled nursing beds in excess of ten percent or not more than ten (10) beds" due to a legislative moratorium on the addition of nursing home beds, and finally that this legislation is "necessary to effectuate relief of these problems to promote the health and welfare of the citizens of the state."

MKS/jmh



Gaston Caperton  
Governor

Taunja Willis Miller  
Secretary

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
**HEALTH CARE COST REVIEW AUTHORITY**

Larry C. Fizer  
Chairman

Board Members  
Walter J. Dale  
Don M. Keesling

MEMORANDUM

TO: Legislative Rule-Making Review Committee

FROM: West Virginia Health Care Cost Review Authority

DATE: September 11, 1989

RE: Amendments and Reasons for Amendments to  
Proposed Legislative Rule: Exemption For  
Conversion Of Acute Care Beds To Skilled  
Nursing Care Beds

The proposed legislative 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. This Code section was recently enacted by the Legislature and became effective July 6, 1989. A public hearing was held on September 6, 1989, to receive oral comments regarding the proposed rule. However, only one (1) person attended the hearing and he chose not to make oral comments. Four (4) written comments were received by this agency. This memorandum will address the written comments made regarding the proposed rule and will explain the changes in the language of the proposed rule.

(1) The West Virginia Hospital Association by its President, Stephen F. Brenton, and Cabell Huntington Hospital by C. Keith Biddle, Director of Planning, submitted comments in support of the proposed rule. The WVHA supports the rule as filed. Cabell Huntington Hospital submitted a lengthy discussion concerning the increased demand for long-term care services as a result of the aging population. Cabell Huntington Hospital appears to be in favor of this concept for all hospitals; however, the enabling legislation limits the conversion to hospitals located in a non-Metropolitan Statistical Area, that have experienced an average occupancy rate of less than 50% for the preceding year; and, that are located in a nursing home service area which is under the bed ceiling. The proposed legislative rule reflects this criteria.

(2) Glenwood Park United Methodist Home, Inc., by its President, Daniel W. Farley, submitted a request that the chief executive officer and/or administrator of the hospital which converts beds pursuant to this rule be duly licensed as a nursing home administrator. W. Va. Code 16-2D-4a(c)(3) states that: "the hospital shall meet all applicable federal and state licensing requirements for the provisions of skilled nursing services." The agency disagrees with this comment and concludes that this requirement as contained in

Memorandum to Legislative  
Rule-Making Review Committee  
September 11, 1989  
Page Two

the West Virginia Code and as reflected in the proposed legislative rule is sufficient.

(3) The New Martinsville Health Care Center submitted comments on September 7, 1989, one day after the official deadline for receiving comments on the proposed rule. This entity suggests that section 65-15-4.1(c) be amended to include approved nursing home beds as well as existing beds in the bed ceiling calculation. The agency disagrees with this comment and notes that W. Va. Code 16-2D-4a(b)(3) states: "for the purposes of this article existing nursing home beds shall be used in the calculation." It is the opinion of the agency that although approved beds are normally used in this calculation, W. Va. Code 16-2D-4a specifically requires the use of existing beds in the calculation.

The New Martinsville Health Care Center also comments that the hospital should be required to obtain a nursing home license under this proposed rule. The agency disagrees with this comment and is of the opinion that the language requiring the hospital to meet all applicable federal and state licensing requirements for the provision of skilled nursing services as contained in section 65-15-4.2(c) and W. Va. Code 16-2D-4a(c)(3) is sufficient.

(4) Minor changes were made to the proposed rule by the agency to correct grammatical and typographical errors. No substantive amendments were made to the proposed rule.

MKS/jmh

WV HEALTH CARE COST REVIEW AUTHORITY  
PUBLIC HEARING REGISTRATION

Date of Hearing: September 6, 1989

Nature of Hearing: CON Exemption for Conversion of Acute Care Beds to Skilled Nursing Care Beds

	Individual's Name:	Name of Organization:	Do you wish to speak? Y or N
1	Bob Whitley	West Virginia Hospital Association	
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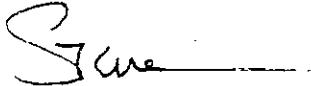
~~cc: Bd  
M... ..~~

## WEST VIRGINIA HOSPITAL ASSOCIATION

Dear Mr. Chairman: *Larry*

The West Virginia Hospital Association has reviewed the Emergency Rules for Exemption for conversion of excess acute care beds to skilled nursing care beds which were filed on August 3, 1989. The Hospital Association supports the emergency rules as filed. In particular, we appreciate the fact that hospitals will only need to send a verified notice to HCCRA instead of a CON application. As you know, most rural hospitals do not have planning staffs and it is not easy for them to locate the resources necessary to submit CON applications.

Kindest personal regards,



Stephen F. Brenton  
President

SFB/els

Mr. Larry Fizer, Chairman  
WV Health Care Cost Review Authority  
100 Dee Drive  
Charleston, West Virginia 25302

August 18, 1989

8.23-89



# CABELL HUNTINGTON HOSPITAL

*cc: ~~St~~ Messanne*

September 5, 1989

**RECEIVED**

**SEP 06 1989**

**Certificate of Need**

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

RE: Exemption for Conversion of Acute Care Beds  
to Skilled Nursing Care Beds

Dear HCCRA:

This letter is in response to your request for comments regarding the above referenced issue. There are three factors which directly impact the issue: 1) increased demand for long term care services as a result of the aging population; 2) greater need for subacute and skilled services as a result of the prospective payment system; and, 3) excess acute care capacity resulting from reduced utilization. The following discussion will address these three factors.

### Long Term Care and the Aging Population

By now nearly everyone is familiar with the situation facing our nation and state regarding the increasingly aging population. From 1950 to 1980, the elderly population in the United States doubled in size from 12.4 million persons to 24.9 million. (1) In 1980, one in nine persons was 65 or older, whereas the projection for the year 2030 is that one in five persons will be 65 or older. (2) Currently, the elderly make up 12.2 percent of West Virginia's population. By the year 2000, the elderly are expected to comprise 19.3 percent of the State's population. (3) In West Virginia, the 75 to 84 age group is expected to increase from 27,205 in 1980 to 40,078 in 2000 and the 85-and-older group is expected to increase from 6,481 in 1980 to 10,032 in 2000. (4)

(1) Draft: West Virginia State Health Plan, Part One, Health Policy Framework, November 7, 1988, p. 38.

(2) Proposed: Long Term Care Chapter of the West Virginia State Health Plan, December 1986, p. 7.

(3) Draft: West Virginia State Health Plan, Part One, Health Policy Framework, November 7, 1988, p. 39.

(4) Proposed: Long Term Care Chapter of the West Virginia State Health Plan, December 1986, p. 7.

Comments of Exemption for Conversion  
of Acute Care Beds to Skilled Nursing Care Beds  
Page 2.

With this increase in age of the population, comes the need to meet the health care needs of the elderly who already consume the majority of our health care resources. As the number of seniors increases, as well as life expectancy and the prevalence of chronic diseases, the need and demand for health care services will also increase. As the nation and our state begin to experience these trends, the system for delivering health care services will need to be further developed and refined. The health care system must provide for a continuum of care -- from community-based services to institutional care. (5)

The Impact of the Prospective Payment System

The prospective payment system through DRGs has limited the number of allowable hospitalization days for patients whose primary coverage is provided by the Medicare program. Consequently, the average length of stay of Medicare patients in acute care hospitals has fallen. Earlier patient discharges have brought about the evolution of a new patient category which could be described as "subacute" care. This category of patient creates a new need for service along the long term care continuum.

Declining Utilization and Excess Capacity

Concurrent to the increasing age of the population and reimbursement through the prospective payment system, acute care hospitals have experienced declining utilization. According to the American Hospital Association's Annual Reports for 1982 through 1987, use of West Virginia's hospitals decreased. The average length of a hospital stay for West Virginia hospitals included in the report fell from 7.4 days in 1981 to 6.6 days in 1986. The comprehensive occupancy rates fell from 77.1 percent to 59.8 percent over the same time period. Although decreases in occupancy rates were experienced nationwide, West Virginia's rates fell faster during the period 1984 through 1986. (6) The result of this declining utilization has been excess acute care capacity both nationwide and in West Virginia.

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(5) Draft: West Virginia State Health Plan, Part One, Health Policy Framework, November 7, 1988, p. 39.

(6) Ibid, p. 38.

Comments of Exemption for Conversion  
of Acute Care Beds to Skilled Nursing Care Beds  
Page 3

Exemption

A reasonable approach to address the factors highlighted above is to allow acute care facilities to convert excess capacity to subacute and skilled care. The conversion of acute care beds to meet subacute and skilled care needs will put already constructed beds to good use. By using existing beds to meet these specialized long term care needs, overcapitalization (overbuilding) will be avoided, the health care needs of the elderly will be met, and the cost of providing those services will be contained.

In addition, provision of subacute care services by hospitals will increase the quality and continuity of care delivered. Attached is an article which appeared in AHA News, Vol. 25, No. 34, August 21, 1989. The article describes how rural swing-bed programs saved money for the Medicare program and also improved patient outcomes. The same benefits of cost savings and improved quality which were discovered by HCFA and the Robert Wood Johnson Foundation could be realized beyond the rural setting. This could be accomplished by exempting the conversion of acute care beds to subacute and skilled uses in rural and urban hospitals. Therefore, any extension of an exemption for conversion of acute care beds to subacute, skilled, and intermediate uses would be welcome.

The Criteria for Exempting Conversions

Although the criteria upon which conversion exemptions should be granted are not fine tuned within this letter, the following discussion presents important concepts which must be inherent to any exemption criteria. In the final analysis, the criteria should: 1) be based upon the need of the individual institution to convert its excess capacity; 2) provide high conversion flexibility to acute care facilities through a "swing-bed" concept; and, 3) assist in avoiding excessive capitalization.

In the past, the ability of a hospital to convert excess bed capacity to skilled care through an exception to the 30-bed ceiling was contingent upon the average occupancy rates of nursing homes in the service area. In order to provide maximum flexibility to meet the increasing subacute and skilled care needs of the aging West Virginia population, consideration should be given to changing the basis upon which bed conversions are contingent. As opposed to the external standard of the average occupancy percent of existing nursing homes, consideration should be given to introduction of institutional specific criteria -- such as the occupancy percent of the acute care hospital and its ability or need to convert excess acute care capacity to other uses.

Comments of Exemption for Conversion  
of Acute Care Beds to Skilled Nursing Care Beds

Page 4

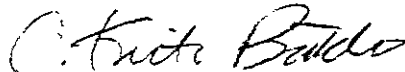
Once an institutional need to convert is proven in exception to the 30-bed ceiling rule, the exemption should be granted to convert the excess acute care beds to "swing-beds". The "swing-bed" concept will provide exempted hospitals with the flexibility to convert the beds back to acute care bed use when the need arises. In this way, hospitals will be able to better serve the health care needs of their communities by providing the optimal number of acute, subacute, and skilled beds to more exactly meet the demand for those beds. Therefore, if the need truly exists for a certain level of care, the hospital will be able to meet the need for care immediately.

Further, the conversion should allow for only renovation or construction which is necessary to meet applicable long-term care licensing or certification requirements. In this way, the acute care facility will be ready to serve the subacute and skilled care needs of the community without excessive capital expenditure.

As mentioned previously, the aging population will heighten the demand for subacute and skilled care. Hospitals need the flexibility to respond quickly to this demand. Unless the conversion criteria provides flexibility for conversion of excess capacity, the needs of the increasingly aged population will go unmet.

I would like to thank the Authority for inviting comments on this very important issue and would appreciate your consideration of these comments.

Sincerely,



C. Keith Biddle  
Director of Planning

cc: W. Don Smith, President and CEO  
D. Monte Ward, Senior Vice President/CFO  
Bob Whitler, West Virginia Hospital Association

# Glenwood Park United Methodist Home, Inc.

Route 1, Box 464  
Princeton, West Virginia 24740  
(304) 425-8128  
(304) 325-8164

*Handwritten notes:*  
C...  
M...

August 25, 1989

Mr. Larry C. Fizer  
Chairman  
Health Care Cost Review Authority  
100 Dee Drive  
Suite 201  
Charleston, WV 25311

Dear Mr. Fizer:

I am writing in reference to your letter of August 4, 1989, concerning the Emergency Rule required through the enactment of House Bill 2612, effective July 6, 1989. I appreciate being given the opportunity to make comments on the rule. Due to previous commitments, I will be unable to attend the Public Hearing on September 6, 1989.

In reviewing the exemption for coverage of acute care beds to skilled nursing care beds, Section 4.2 (c), page 4, a circumstance occurs which I believe needs clarification. The matter has to do with meeting all applicable Federal and State licensure requirements for the provision of skilled nursing services in an acute setting.

As one reads the Emergency Rule, I believe attention is given to licensure as related to the facility. I am unclear as to licensure for the Chief Executive Officer and/or Administrator. There is a distinct difference which needs to be addressed.

At both Federal and State levels, persons functioning as administrators in nursing homes must be licensed by the State in which they practice. This is documented by the Health Care Financing Administration, the West Virginia Board of Health, and the West Virginia Nursing Home Administrators Licensing Board. If precise references would be helpful, please let me know.


The principle point to be drawn out at this time is to be sure when hospitals move to provide skilled nursing services, the Chief Executive Officer and/or Administrator be duly licensed by the State of West Virginia to practice as a nursing home administrator. To do otherwise, would seem to me to violate the intent of Section 4.2 (c) of the Emergency Rule.

8-28-89 *LD*

Mr. Larry C. Fizer  
Page 2  
August 25, 1989

If I can be of further assistance, please advise. Otherwise, I would appreciate my views being made a part of the record for the hearing.

Sincerely,



Daniel W. Farley, ACSW-CFACHCA  
President/Chief Executive Officer

im

NEW MARTINSVILLE



RECEIVED

*cc: Ed. Marcann  
Gill*

SEP 07 1989

• 225 Russell Ave • New Martinsville, WV 26155-1532 • (304) 455-2600  
HEALTH CARE COST REVIEW AUTHORITY

September 5, 1989

Larry C. Fizer, Chairman  
Health Care Cost Review Authority  
100 Dee Drive, Suite 201  
Charleston, West Virginia 25311

re: HOSPITAL ACUTE TO SKILLED NURSING BED CONVERSION-DRAFT RULES

Dear Mr. Fizer:

I have reviewed the draft emergency rules that would exempt from certificate of need the conversion of acute care beds to skilled nursing beds by a licensed hospital. The following are my comments on those draft rules:

Section 4.1 [c] (page 3)-change paragraph to read as follows (additions to proposed language underlined):

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

Section 4.2 [c] (page 4)-change paragraph to read as follows (additions to proposed language underlined):

[c] The hospital shall meet all applicable federal and state licensing requirements, and shall obtain a nursing home license prior to occupancy of such approved beds, for the provision of skilled nursing

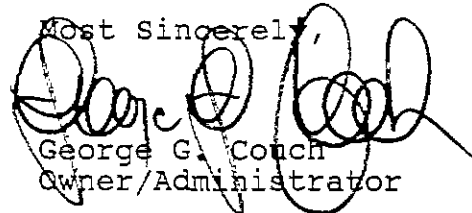


Health Care Cost Review Authority/Emergency Acute to Skilled  
Bed Conversion Rules  
September 5, 1989  
Page two of two

services including a requirement that all  
skilled care beds created under this exemption  
shall be located in distinct part, long-term  
care units;

Please enter the above comments and language changes in the  
hearing record for this matter. Should you have any  
questions or need clarification from me on my comments,  
please do not hesitate to contact me.

Most Sincerely,

A handwritten signature in black ink, appearing to read "George G. Couch", written over a typed name and title.

George G. Couch  
Owner/Administrator

GGC:kdh  
copy:W. Va. Health Care Association  
file