

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

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SECRETARY OF STATE

Form #8

Effective Date

Nov. 14, 1991 *JK*

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 65

DATE EMERGENCY RULE WAS ORIGINALLY FILED: June 24, 1991

IS THIS THE FIRST EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

Yes

IS THIS THE SECOND EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

DATE OF FIRST EMERGENCY AMENDMENT: November 8, 1991

SERIES NUMBER OF RULE: 17 TITLE OF RULE: Health Services

Offered By Health Professionals

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

The amended rule contains changes made by the Legislative Rule Making Review Committee. The amendment is necessary to make the emergency rule in effect consistent with the proposed legislative rule as modified by the committee.

Use Additional Sheets If Necessary.

Larry C. Fizer
Signature
LARRY C. FIZER, Chairman

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Health Services Offered By Health Professionals

Type of Rule: Legislative Interpretive Procedural

Agency Health Care Cost Review Authority Address 100 Dee Dr., 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 require certificate of need review for certain health services, equipment and/or facilities offered, acquired or developed by health professionals as required by W.Va. §16-2D-4(a)(1).

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.

Health professionals subject to review must pay the applicable fee for certificate of need review as required by 65 CSR 10.

C. Economic Impact on Citizens/Public at Large.

The public should benefit from the prevention of unnecessary and duplicative health services which escalate the cost of health care.

Date June 24, 1991

Signature of Agency Head or Authorized Representative



Larry C. Fizer, Chairman

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

SERIES 17

Title: HEALTH SERVICES OFFERED BY HEALTH PROFESSIONALS

\$65-17-1 General

1.1. Scope - This legislative rule specifies which health services, major medical equipment, and/or facilities acquired, offered or developed by health professionals are subject to certificate of need review.

1.2. Authority - W. Va. Code, §16-2D-4(a)(1), §16-2D-8.

1.3. Filing Date - June 24, 1991.

1.4. Effective Date - _____.

~~\$65-17-2~~ Introduction

~~This legislative rule implements certain provisions of Enrolled House Bill 4230 which was passed by the Legislature on March 10, 1990, and became effective ninety (90) days from passage. This bill amended W. Va. Code, §16-~~

~~2D-2(b), (c) and §16-2D-4(a)(1) by adding language which requires certificate of need review of the acquisition, offering or development of certain health services by health professionals. This bill authorizes the state agency to adopt rules to implement this requirement.~~

§65-17-32 Definitions

As used in this legislative rule, all terms that are defined in W. Va. Code, §16-2D-1 et seq. have those same meanings which are in some cases further clarified herein. All terms not defined in W. Va. Code, §16-2D-1 et seq. have the following meanings unless the context expressly requires otherwise.

32.1. Diagnostic center - a facility which offers laboratory and/or imaging services and in which the total cost of all the laboratory and imaging equipment exceeds ~~\$750,000.00~~ \$300,000.00. In determining whether the medical equipment costs more than ~~\$750,000.00~~ \$300,000.00, the cost of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of such equipment shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

32.2. "State agency" means the West Virginia Health Care Cost Review Authority which is designated to administer the certificate of need program by West Virginia Code, §16-29B-11.

§65-17-43 Health Services, Major Medical Equipment and/or Facilities

43.1. One or more health professionals licensed to practice in this state pursuant to the provisions of Chapter 30 of the West Virginia Code who wish to acquire, offer or develop one or more of the health services, major medical equipment and/or facilities listed in subsection 43.3 of this rule shall follow the procedures set forth in the legislative rule "Certificate of Need," §65 C.S.R. 7 (1983).

43.2. If a health service, major medical equipment and/or facility is one of the health services set forth in subsection 43.3, the proposed acquisition, development or offering of that service, equipment and/or facility by a licensed health professional is subject to review.

43.3. The list of health services, major medical equipment and/or facilities subject to review pursuant to ~~section 4(a)(1) of the Act~~ W. Va. Code §16-2D-4(a)(1) is as

follows. This list is all inclusive and shall not be altered except by ~~amendment~~ to this legislative rule. ~~A health service on the list shall hereafter be referred to as a "listed health service."~~

43.3.1. Computerized tomography (CT).

43.3.2 . Lithotripsy.

43.3.3. Radiation therapy.

43.3.4. Magnetic resonance imaging (MRI).

43.3.4.5. Proton emission tomography (PET).

43.3.56. Cardiac catheterization.

43.3.67. Birthing centers.

43.3.78. Ambulatory surgical facilities or
ambulatory surgical centers.

43.3.89 Diagnostic centers.

~~4.4~~ Application Fee

~~The fee to be paid by the licensed health professional(s) upon filing an application shall be the same fee paid by a health care facility for the addition of a health service as specified in W. Va. C.S.R. §65-10-3.2.10.~~

4.5. §65-17-4 Batching Category

All applications received pursuant to this rule shall be considered by the state agency in the applicable batching category seven (7) as described in ~~W. Va. § C.S.R. 65-7-16.1.~~ § 65 C.S.R. 7. Provided that, there shall be is no expenditure minimum requirement for the inclusion of health services, major medical equipment and/or facilities offered, acquired or developed by health professionals, ~~in batching category seven (7).~~

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Health Services Offered By Health Professionals

Type of Rule: Legislative Interpretive Procedural

Agency Health Care Cost Review Authority Address 100 Dee Dr., Suite 201
Charleston, WV 25311

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2. Explanation of above estimates.

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

3. Objectives of these rules:

To require certificate of need review for certain health services, equipment and/or facilities offered, acquired or developed by health professionals as required by W.Va. §16-2D-4(a)(1).

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.**

Health professionals subject to review must pay the applicable fee for certificate of need review as required by 65 CSR 10.

C. **Economic Impact on Citizens/Public at Large.**

The public should benefit from the prevention of unnecessary and duplicative health services which escalate the cost of health care.

Date June 24, 1991

Signature of Agency Head or Authorized Representative



Larry C. Fizer, Chairman

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
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Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

November 14, 1991

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Health Care Cost Review Authority


RULE: Amendments, Series 17, Health Services Offered by Health Professionals

ORIGINALLY FILED AS AN EMERGENCY RULE: June 24, 1991

FIRST EMERGENCY AMENDMENT: November 8, 1991

DECISION NO. 101-91

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
1991 NOV 14 PM 5:34

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KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

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DECISION

EMERGENCY RULE DECISION (ERD 101-91)

AGENCY: Health Care Cost Review Authority
RULE: Amendments, Series 17, Health Services Offered by Health Professionals

ORIGINALLY FILED AS AN EMERGENCY RULE: June 24, 1991

FIRST EMERGENCY AMENDMENT FILED: November 8, 1991

- par. 1 The Health Care Cost Review Authority (HCCRA) has filed amendments to the above emergency rule.
- par. 2 West Virginia Code 29A-3-a 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-a(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 HCCRA filed this emergency rule with supporting documents with the Secretary of State November 14, 1991 and with the LRMRC November 14, 1991.

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 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §16-2D-4(a) reads:

(a) Except as provided in §16-2D-3(h) of this article, noting in this article or the rules and regulations adopted pursuant to the provisions of this article may be construed to authorize the licensure, supervision, regulation or control in any manner of the following:

par. 9 It is the determination of the Secretary of State that the HCCRA has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (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.

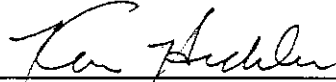
par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the HCCRA are as follows:

The amended rule contains changes made by the Legislative Rule Making Review committee. The amendment is necessary to make the emergency rule in effect consistent with the proposed legislative rule as modified by the committee.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g).

par. 14 This decision shall be cited as Emergency Rule Decision 101-91 or ERD 101-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Health Care Cost Review Authority, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

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