

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #7

Do Not Mark in this Box

FILED
1990 JUL 19 PM 2:25
SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 65

CITE AUTHORITY: W. Va. Code, § 16-2D-4(a)(1), § 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: 17

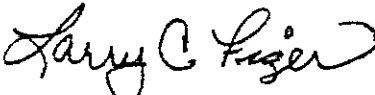
TITLE OF RULE BEING FILED AS AN EMERGENCY: Health Services Offered
by Health Professionals

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:

This 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 mandates the HCCRA to adopt rules to require certificate of need review for certain health services offered by health professionals. Without this rule health professionals may offer expensive and often duplicative health services without review or approval by the HCCRA. Expensive and unnecessary health services add to the cost of health care in this state.

Use Additional Sheets If Necessary.



LARRY C. FIZER, CHAIRMAN



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Building 3, Capitol Complex
Charleston, WV 25305

Gaston Caperton
Governor

June 18, 1990

The Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Re: Proposed Legislative Rule-
Health Services Offered by
Health Professionals

Dear Secretary Hechler:

I have reviewed the proposed legislative rule for health services offered by health professionals and hereby approve the filing of this rule.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Taunja Willis Miller".

Taunja Willis Miller, Secretary
Department of Health and Human Resources

TWM/jah

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 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 require certificate of need review for certain health services offered by health professionals as mandated by W. Va. Code § 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.

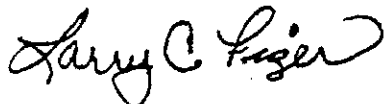
Health care professionals subject to review must pay a
\$500.00 application fee for certificate of need review.

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 19, 1990

Signature of Agency Head or Authorized Representative



LARRY C. FIZER, CHAIRMAN

DATE: June 19, 1990
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: West Virginia Health Care Cost Review Authority
EMERGENCY RULE TITLE: Health Services Offered By Health Professionals

1. Date of filing: June 19, 1990
2. Statutory authority for promulgating the emergency rule: WV Code §16-2D-4(a)(1), §16-2D-8
3. Date of filing of proposed legislative rule: _____
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
New language

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.
WV Code §16-2D-4(a)(1) requires the HCCRA to adopt rules to require certificate of need review for certain health services offered by health professionals. Without this rule health professionals may offer expensive and often duplicates services without reviewer approval by the HCCRA. Such expensive and unnecessary services add to the escalating cost of health care in this state.

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

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 #6

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 acquired, offered or developed by health professionals that 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 19, 1990.

1.4. Effective Date - June 19, 1990.

§ 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.

§ 65-17-3 Definitions

As used in this legislative rule, all terms that are defined in the Act at section 2 thereof have those same meanings which are in some cases further clarified herein. All terms not defined in the Act have the following meanings unless the context expressly requires otherwise.

3.1. "Act" means the certificate of need act, West Virginia Code, § 16-2D-1 et seq.

3.2. 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.

3.3. "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.

§ 65-17-4 Health Services

4.1. One or more health professionals licensed to practice in this state pursuant to the provisions of Chapter 30 of the West Virginia Code who wishes to acquire, offer or develop one or more of the health services listed in subsection 4.3 of this rule shall follow the procedures set forth in the legislative rule "Certificate of Need," § 65 CSR 7 (1983).

4.2. If a health service is one of the health services set forth in subsection 4.3, the proposed acquisition, development or offering of that service by a licensed health professional is subject to review.

4.3. The list of health services subject to review pursuant to section 4(a)(1) of the Act 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."

4.3.1. Computerized tomography (CT).

4.3.2 Lithotripsy.

4.3.3. Radiation therapy.

4.3.4. Magnetic resonance imaging (MRI).

4.3.4. Proton emission tomography (PET).

4.3.5. Cardiac catheterization.

4.3.6. Birthing centers

4.3.7. Ambulatory surgical facilities or ambulatory surgical centers.

4.3.8. 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. CSR § 65-10-3.2.10.

4.5. Batching Category

All applications received pursuant to this rule shall be considered by the state agency in batching category seven (7) as described in W. Va. § CSR 65-7-16.1. Provided that, there shall be no expenditure minimum requirement for the

HCCRA
Leg. Rule, 2D
Series 17, Sec. 5

inclusion of health services offered, acquired or developed by health professionals in batching category seven (7).

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 345-4000
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STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 18, 1990
ADMINISTRATIVE LAW DIVISION

July 18, 1990

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Health Care Cost Review Authority

RULE: New Rule, Series 17; Health Services Offered by Health Professionals

DATE FILED AS AN EMERGENCY RULE: June 19, 1990

DECISION NO. 17-90

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.

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER
Secretary of State

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Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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DECISION

EMERGENCY RULE DECISION
(ERD 17-90)

AGENCY: Health Care Cost Review Authority

RULE: New Rule, Series 17, Health Services Offered by Health Professionals

FILED AS AN EMERGENCY RULE: June 19, 1990

- par. 1 The Health Cost Review Authority (HCCRA) has filed the above new rule as an emergency.
- 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 Fire Commission (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 HCCRA has filed this emergency rule with supporting documents with the Secretary of State on June 19, 1990 and with the LRMRC on June 19, 1990.

par. 7 It is the determination of the Secretary of State that 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) (1) reads:

(a) Except as provided in §16-2D-3(h) of this article, nothing 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 (1) Private practice of any one or more health professionals licensed to practice in this state pursuant to the provisions of §30-1-1 et seq. of this code: Provided, That such exemption from review of private office practice shall not be construed to include such practices where major medical equipment otherwise subject to review under the provisions of this article as acquired, offered or developed: Provided, however, That such exemption from review or private office practice shall not be construed to include the acquisition, offering or development of one or more health services, including ambulatory surgical facilities or centers, lithotripsy, magnetic resonance imaging and radiation therapy by one or more health professionals. The state agency shall adopt rules pursuant to §16-2D-8 of this article which specify the health services acquired, offered or developed by health professionals which are subject to certificate of need review.

par. 9 §16-2D-8 of the West Virginia Code further states in part:

(a) The state agency is hereby empowered to promulgate additional rules and regulations:

(1) To carry out the provisions of this article; and

(2) To assure 'hospitals' compliance with requests for information concerning rates charged for each of the 25 most frequently used hospital services in the State including the average semiprivate and private room rates.

(b) All rules & regulations shall be promulgated pursuant to §29A-1-1 et seq. of this Code and as described herein. In addition, before adopting proposed rules & regulations the state agency shall give interested persons an opportunity to offer written comments on the rules and regulations, or any revisions thereof, which it proposes to adopt.

par. 10 It is the determination of the Secretary of State that HCCRA has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

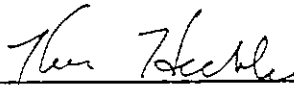
par. 12 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 13 The facts and circumstances as presented by HCCRA are as follows:

This rule implements certain provisions of Enrolled House Bill 4230 which was passed by the Legislature on March 10, 1990, and became effective ninety days from passage. This bill mandates the HCCRA to adopt rules to require certificate of need review for certain health services offered by health professionals. Without this rule health professionals may offer expensive and often duplicate health services without review or approval by the HCCRA. Expensive and unnecessary health services add to the cost of health care in this state.

par. 14 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency under "immediate preservation of public peace, health, safety or welfare" and "time limitation".

par. 15 This decision shall be cited as Emergency Rule Decision 17-90 or ERD 17-90 and may be cited as precedent. This decision is available from the Secretary of State's office 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 _____

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 18, 1990
ADMINISTRATIVE LAW DIVISION