WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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JUL 31 ... 3:15

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

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 65

CITE AUTHORITY W.Va. Code § § 16-2D-4(a)(1) and 16-2D-8

AMENDMENT TO AN EXISTING RULE: YES___ NO X

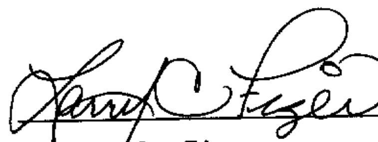
IF YES, SERIES NUMBER OF RULE BEING AMENDED: ________

TITLE OF RULE BEING AMENDED: ________

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 17

TITLE OF RULE BEING PROPOSED: Health Services Offered By Health Professionals

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

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Health Services Offered By Health Professionals

Type of Rule: X 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.

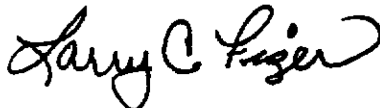
Health care professionals subject to review must pay a $500.00 application fee for certificate of need review.

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: July 31, 1990

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Health Care Cost Review Authority

LEGISLATIVE RULE TITLE: Health Services Offered By Health Professionals

1. Authorizing statute(s) citation W.Va. Code § § 16-2D-4(a)(1); 16-2D-8

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

   6-19-90

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

   publication in HCCRA newsletter (circulation approx: 1000; to providers, payors and other interested persons); see also attached list

   c. Date of hearing (s): 7-20-90

   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)

   July 31, 1990

   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: ______________________________

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

      ____

   d. Attach findings and determinations and reasons:

      Attached ______________________________

TITLE 65
WEST VIRGINIA LEGISLATIVE RULE
HEALTH CARE COST REVIEW AUTHORITY

SERIES 17

Title: HEALTH SERVICES OFFERED BY HEALTH PROFESSIONALS

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§ 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 - ________________________.

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.

§ 65-17-3 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. In determining whether the medical equipment costs more than $750,000.00, 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.

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

Gaston Caperton
Governor

Taunja Willis Miller
Secretary

Larry C. Fizer
Chairman

Board Members
Walter J. Dale
Don M. Keesling

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES

HEALTH CARE COST REVIEW AUTHORITY

MEMORANDUM

TO: Legislative Rule-Making Review Committee

FROM: Health Care Cost Review Authority

RE: Brief Summary of Proposed Legislative Rule: Health Services Offered By Health Professionals; and Statement of Circumstances Requiring The Rule

DATE: July 31, 1990

The proposed legislative rule requires health professionals licensed to practice in this state pursuant to the provisions of Chapter 30 of the W. Va. Code to undergo certificate of need review if they acquire, offer, or develop certain health services. The reviewable health services contained in the rule are computerized tomography (CT), lithotripsy, radiation therapy, magnetic reasonance imaging (MRI), proton emission tomography (PET), cardiac catherization, birthing centers, ambulatory surgical facilities or ambulatory surgical centers, and diagnostic centers.

Enrolled H. B. 4230 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. The bill further requires the HCCRA to adopt rules which specify which health services are reviewable.

MKS/jmh

100 Dee Drive, Suite 201 Charleston, West Virginia 25311 Telephone: [304] 343-3701

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: Health Care Cost Review Authority

RE: Amendments and Reasons for Amendments to Proposed Legislative Rule: Health Services Offered By Health Professionals

DATE: July 31, 1990

The proposed legislative rule requires certificate of need review for the offering, acquisition or development of certain health services by health professionals as provided by the 1990 amendments to W. Va. Code, §§ 16-2D-2(b), (c), and 4(a)(1). This memorandum will address the written and oral comments made regarding the proposed rule and will explain the reasons for accepting some of the suggestions and for rejecting others. Consequent changes in the language of the proposed rule will also be addressed.

(1) The first change in the rule is contained in section 1.1. The reason for this amendment is grammatical and was initiated by the Authority.

(2) The second amendment to the rule is contained in section 3.2. Language was added for clarification purposes. This amendment was proposed by Blue Cross/Blue Shield of West Virginia, Inc. This language is contained in the Code and is commonly used and understood by persons in the health care field. Accordingly, the HCCRA agrees with the comments submitted by Blue Cross/Blue Shield.

100 Dee Drive, Suite 201 Charleston, West Virginia 25311 Telephone: [304] 343-3701

(3) The West Virginia Medical Association submitted comments both written and oral expressing its concern that physicians were being treated differently from hospitals. The HCCRA notes that the intent of the statute which requires the implementation of this rule was to "level the playing field" between physicians and hospitals. Prior to the passage of Enrolled H. B. 4230 health services listed in the proposed rule were reviewable for hospitals and not for physicians. Since the intent of the legislation which requires the rule is to treat hospitals and physicians in a similar fashion, the HCCRA rejects the comments offered by the West Virginia State Medical Association.

(4) Comments were received both written and oral from the West Virginia Hospital Association and Cabell Huntington Hospital. These comments were offered in support of the proposed rule.

(5) Written comments were received from Blue Cross/Blue Shield of West Virginia, Inc., which suggested that the definition of "diagnostic center" be expanded. The HCCRA rejects this suggestion because the suggested terminology is not generally accepted in the health care field and, furthermore, the HCCRA intends to amend this definition to be in conformity with medicare regulations once the medicare regulations are adopted.

MKS/jmh

WV HEALTH CARE COST REVIEW AUTHORITY
MEETING REGISTRATION

Date of Meeting: July 20, 1990

Nature of Meeting: Proposed Legislative Rule for Health Services Offered by Health Professionals

	Individual's Name:	Name of Organization:	Do you wish to speak? Y or N
1	Pat Nutheron	WVMGMA	N
2	George Rider	WVSMA	Y
3	Michael Luton	Huntington Internal Med	N
4	Mike Chaney	Kay, Casto Chaney, Love & Wise	Y
5	Dan Christy	Health Planning	N
6	Anne-Marie Zi	Health Planning	N
7	Bob Whitler	WVHA	Y
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WEST VIRGINIA HOSPITAL ASSOCIATION COMMENTS
ON
WEST VIRGINIA LEGISLATIVE RULE
HEALTH CARE COST REVIEW AUTHORITY
SERIES 17

HEALTH SERVICES OFFERED BY HEALTH PROFESSIONALS

Mr. Chairman and members of the board, my name is Bob Whitler, Vice President/Public Policy Development, West Virginia Hospital Association. On behalf of the West Virginia Hospital Association and its 63 member hospitals, I appreciate the opportunity to comment this morning on West Virginia Legislative Rule Series 17 which implements certain provisions of House Bill 4230 which was passed by the legislature on March 10, 1990. The bill amends West Virginia's certificate of need law by adding language which requires CON review for the acquisition, offering or development of health care services by health care professionals.

The West Virginia Hospital Association supports the rules as drafted by the Health Care Cost Review Authority. We believe that the rules level the playing field between acute care hospitals and health care professionals. Hospitals are concerned with the proliferation of imaging services, cancer treatment centers, ambulatory surgical centers and diagnostic centers outside the hospital setting. Hospitals are required to provide health care services on a 24-hour emergency basis to the entire population including the medically indigent while private health care professionals do not have that same obligation, sometimes selecting patients with private health insurance and then referring the medically indigent or those with Medicaid coverage to the hospital emergency room.

We do have one comment under 4.3.8 covering diagnostic centers. According to rules, the definition of a diagnostic center is a facility which

offers laboratory and/or imaging services and in which the total cost of the laboratory and imaging equipment exceeds $750,000.

The task force established by the Health Care Cost Review Authority which helped to draft these regulations, was considering the proposed Medicare rules on diagnostic equipment. Perhaps when Health Care Financing Administration does promulgate Medicare rules on diagnostic equipment, the Health Care Cost Review Authority may want to take in account those rules in terms of developing a new definition for a diagnostic center.

The West Virginia Hospital Association sincerely appreciates the opportunity to comment on Series 17 rules this morning. I'll be glad to answer any questions.

Blue Cross
Blue Shield
of West Virginia, Inc.

200 Kanawha Boulevard, E.
P. O. Box 1353
Charleston, WV 25325

Writer's Direct Dial Number

(304) 347-7705

RECEIVED

JUL 20 1990

HEALTH CARE COST REVIEW AUTHORITY

July 18, 1990

Ms. Marianne K. Stonestreet
General Counsel
Health Care Cost Review Authority
100 Dee Drive
Charleston, WV 25311

Re: Health Services Offered by Health Professionals

Dear Ms. Stonestreet:

Thank you for the opportunity to have participated in the Task Force on regulations to implement HB 4230 and this opportunity to comment on the emergency rules developed by the Health Care Cost Review Authority.

The legislation and regulations are a much needed measure to permit HCCRA's review of very expensive health care technology. It was shocking to learn that a linear accelerator was exempted from review on the basis that it was part of a physician's private office practice. The new rules take a positive step toward "leveling the playing field" for the regulation of outpatient health care services offered by both hospitals and health care professionals.

The health care industry's movement toward increased use of outpatient settings has greatly increased the billings of health professionals for services which have historically been offered only by institutional health care providers. We have noted substantial cost resulting from "ancillary service" billings by health professionals. Some facilities operated as the private office/clinic of physicians have lab, x-ray, ambulatory surgery and/or machine testing capabilities which rival or surpass those available at many small hospitals. These facilities contribute to the proliferation and duplication of technology while pressuring the financial resources of not-for-profit hospitals who must rely upon independent professionals for referrals.

Recognition of a "Diagnostic Center" as a type of facility subject to the certificate of need process begins to address this problem. We would suggest that the definition of "Diagnostic Center" be expanded to include within the $750,000 threshold all forms of physiological (machine) testing (to include EKG's, EEG's, and EMG's) whether or not they involve imaging.

We would also suggest that the definition be further expanded to clarify that "In determining whether all the medical equipment cost more than $750,000, the cost of studies, surveys, design, plans, working drawings, specifications, and other activities essential to the acquisition and housing of such equipment shall be included. If the book value or acquisition price of the equipment is less than fair market value, the term "cost" includes the fair market value."

We would urge that HCCRA and that state's health planning process begin to develop specific standards to permit the effective review of applications for certificates of need submitted for new health care services offered by health professionals. The expansion of a health professional's private practice to the scope of a Diagnostic Center has the potential to add substantial cost to our health care system either directly or by threatening the viability of a nearby hospital.

I hope that you find these comments to be useful and relevant.

Sincerely,

William E. Gavin
Vice President
Health Care Services

WEB:01/m

cc: Mr. Fizer

EMERGENCY WEST VIRGINIA LEGISLATIVE RULE

HEALTH CARE COST REVIEW AUTHORITY

SERIES 17

HEALTH SERVICES OFFERED BY HEALTH PROFESSIONALS

Good Morning, my name is George Rider, Executive Director of the West Virginia State Medical Association. I appreciate the opportunity to comment on the Series 17 rules implementing Health Services Offered By Health Professionals as part of HB 4230.

One of the primary roles of a physician is to serve as an advocate for his/her patients. In this role, he or she attempts to ensure that the needs of the patient are met. An obligation under this concept is for the physician to do everything possible to provide appropriate investigative, diagnostic and therapeutic services. If a need for these services cannot be met by a hospital or other entity, the physician must seek other alternatives to obtain the needed service.

If a physician or group of physicians have the opportunity to obtain equipment or create facilities to provide services to their patients in a convenient, economical and efficient manner, this should be allowed to happen with a minimum of external control or criteria.

If other entities do not have the resources to obtain needed services for patients in a particular area, then why make it difficult for the physician to obtain these services directly?

I have the following question concerning these rules:
Will these rules be applied using the $750,000 threshold or will these rules place different criteria on physicians than are now required of hospitals or other entities? That is, if equipment or facilities listed in section 4.3.3 can be obtained at less than $750,000, will it be reviewable if physicians are seeking it and not be reviewable if a hospital or other entity is seeking it? Will replacement of such services be reviewable for physicians and not reviewable for hospitals or other entities?

If the answer to this question is yes, different criteria are being used for physicians and these rules are unfair. If the answer is no, the same criteria will be used for all parties seeking these services, then this should be stated in these rules. Thank you.

CABELL HUNTINGTON HOSPITAL

RECEIVED JUL 23

July 20, 1990

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

RE: Legislative Rule for Health Services Offered By Health Professionals

Dear HCCRA:

This letter is in response to the request for comments on the proposed Legislative Rule for Health Services Offered By Health Professionals.

First, we wish to express support for the concept of "leveling the playing field" between health professionals and hospitals embodied by the proposed rule.

Second, we would like to suggest that consideration be given to making two additions to the proposed rule. These include:

1) Adding End Stage Renal Dialysis to the list of reviewable services in Section 4.3; and,

2) Adding a provision to exempt acquisition of computerized tomography, lithotripsy, and magnetic resonance imaging equipment by health professionals in the context of a mobile shared services arrangement with acute care facilities.

Third, we would like to point out that the ability of health professionals' offices to obtain new equipment and initiate new services typically without a certificate of need (CON) can potentially invalidate the CON process. Being subject to CON review, hospitals must make public disclosure of their intent to acquire new equipment and/or initiate new services. In addition, the CON process typically takes 30 to 120 days from filing the letter of intent to receipt of the decision. Therefore, health professionals not subject to CON review are afforded the opportunity to enter the market with the same equipment and/or service in advance of the hospital.

1340 Hal Greer Boulevard, Huntington, West Virginia 25701-0195 304/526-2000

Hospitals make application for CON based upon assumptions of circumstances and facts at time of submission. If, however, health professionals enter the market before the hospital's project is approved and implemented, the original assumptions of hospital's application could change materially -- invalidating not only the assumptions in hospital's CON application, but the CON process as well. The proposed rule may reduce the occurrences in which the CON process could be invalidated.

Finally, we would like to point out that the ability of health professionals to obtain new equipment and initiate new services typically without a certificate of need (CON) can create several very important disadvantages to hospitals. These are listed and discussed below.

1) Delays in Market Entry

Not having to go through the CON process has allowed health professionals faster entry into the market with new equipment and services. As mentioned previously, the CON process typically takes 30 to 120 days. In recent years, the Authority has attempted to expedite its decision making process, and for that hospitals are grateful. Nevertheless, the CON process generally delays market entry by hospitals with new equipment and services, but not by health professionals. It is often true in health care that being the first to enter the market produces a competitive advantage since referral relationships can be established which are not easily severed later. Therefore, the delays associated with the CON process place hospitals at a competitive disadvantage. The proposed rule should help to reduce the degree of this disadvantage.

2) Advance Disclosure of Intent

Also mentioned previously, the CON process requires that advance public notice be given of a hospital's intent to provide new equipment and services. This gives health professionals the opportunity to enter the market ahead of the hospital. The advance disclosure of intent places hospitals at a competitive disadvantage. The proposed rule will subject health professional to the same advance disclosure requirements on selected services. This should help to reduce somewhat the degree of competitive disadvantage borne by hospitals.

3) Loss of Patient Volume

A prevailing trend in health care over the past several years has been the acquisition of equipment and initiation of services by health professionals' offices after acquisition and/or initiation by the hospital has proven successful. Not having to go through the CON process has provided health professionals' offices uncontested entry into the market with competing equipment and/or services. Hospitals must compete with the health professionals for the patients who need the equipment and/or services. The hospital which appropriately acquired the equipment and/or initiated the service by obtaining a CON then finds itself losing patients to health professionals who were not required to obtain a CON. As a result, the hospital finds itself falling short on its projections for the equipment and/or service.

4) Adverse Selection of Equipment and Services

Not having to go through the CON process has allowed uncontested entry of health professionals into the market with new equipment and services which are characteristically high volume, low financial risk propositions. This creates a case of adverse selection for hospitals. Hospitals, being community institutions, are expected to provide a broad range of equipment and services which may not always realize high volume usage or high financial return, but which are needed by the community. Hospitals, therefore, are forced to compete with the health professionals for patients on high volume, high financial return equipment and services; but, then they are often left as the only providers in the community of lower volume, lower financial return equipment and services.

All of these disadvantages serve to lessened the competitiveness and financial viability of hospitals. We support steps to level the playing field.

Thank you for providing the opportunity to comment on the porposed Legislative Rule for Health Services Offered By Health Professionals. Should you have any questions regarding these comments, please call.

Sincerely,

C. Keith Biddle
Director of Planning

cc: W. Don Smith, II, President

BEFORE THE WEST VIRGINIA HEALTH CARE COST REVIEW AUTHORITY

IN THE MATTER OF:

HEALTH SERVICES OFFERED BY
HEALTH PROFESSIONALS

TITLE NO. 65

SERIES 17

TRANSCRIPT OF PROCEEDINGS had and testimony adduced at a public hearing held at the West Virginia Health Care Cost Review Authority, 100 Dee Drive, Charleston, West Virginia, on the 20th day of July, 1990, commencing at 9:30 a.m.

BEFORE: LARRY FIZER, BOARD MEMBER
WALTER DALE, BOARD MEMBER
MARIANNE STONESTREET, GENERAL COUNSEL

Action Court Reporting
Connie R. Doughty
Post Office Box 4449
Charleston, West Virginia 25364
304/925-5588

1 CHAIRMAN FIZER: I'll call to order this morning
2 the hearing for the purpose of Title No. 65, Series 17 Regs.
3 related to Health Services Offered By Health Professionals
4 within West Virginia.
5 In picking up the attendance list this morning and
6 reviewing that, I see that we have two that wishes to
7 comment upon these proposed regulations. At this time I'd
8 ask Mr. Rider of the West Virginia Medical Association to
9 come forward.
10 MR. RIDER: Good morning. My name is George
11 Rider. I'm Executive Director of the West Virginia State
12 Medical Association. I do appreciate the opportunity to
13 comment on the Series 17 rules implementing Health Services
14 Offered by Health Professionals as part of HB 4230.
15 One of the primary roles of a physician is to
16 serve as an advocate for his or her patients. In this role,
17 he or she intends to ensure that the needs of the patient
18 are met. An obligation under this concept is for the
19 physician to do everything possible to provide appropriate
20 investigative, diagnostic and therapeutic services. If a
21 need for these services cannot be met by a hospital or other
22 entity, the physician must seek out other alternatives to
23 obtain the needed service.
24 If a physician or group of physicians have the
25 opportunity to obtain equipment or create facilities to

1 provide services to their patients in a convenient,
2 economical and efficient manner, this should be allowed to
3 happen with a minimum of external control or criteria.
4 If other entities do not have the resources to
5 obtain the needed services for the patients in a particular
6 area, then they make it difficult for the physician to
7 obtain these services directly. We should not do that.
8 Currently in West Virginia, in rural hospitals,
9 they're in a financial crisis. A number of hospitals have
10 closed recently and other hospitals have eliminated services
11 to their communities because of their inability to maintain.
12 It would appear that these rules are going to make it more
13 difficult for those services to be made available to those
14 communities that have lost that capability and that the
15 physicians who have the desire to provide needed services.
16 For example, many hospitals have eliminated obstetrical
17 services. If physicians feel that they can provide these
18 services to the community that they are a part of, I think
19 that it would be appropriate for them to be allowed to do
20 that with a minimum of external rules.
21 I do have the following question concerning the
22 rules. Will these rules be applied using the $750,000
23 threshold, or will these rules place different criteria on
24 physicians than are now required for hospitals or other
25 entities? That is, if the equipment or facilities listed in

1 Section 4.3.3 can be obtained at less than $750,000, will it
2 be reviewable if physicians are seeking it and not be
3 reviewable if a hospital or other entity is seeking it? And
4 even more important, in the replacement of equipment that is
5 now existence. In these situations, will this be reviewable
6 for physicians and not reviewable by others?
7 If the answer to the question is yes, then
8 different criteria are being used for physicians and this
9 particular set of rules and that is unfair. If the answer
10 is no, that the same criteria will be used for all who are
11 seeking to obtain this type of equipment or service, then
12 this should be stated in the rules.
13 I thank you for your time. Any questions?
14 CHAIRMAN FIZER: Thank you, Mr. Rider. Mr. Dale?
15 MR. DALE: No questions.
16 CHAIRMAN FIZER: Ms. Stonestreet?
17 MS. STONESTREET: I have no questions.
18 CHAIRMAN FIZER: Thank you, Mr. Rider. We have
19 one other that wishes to make a comment this morning, Mr.
20 Whitler from the West Virginia Hospital Association.
21 MR. WHITLER: Good morning. Mr. Chairman and
22 Members of the Board and Legal Counsel, my name is Bob
23 Whitler, Vice President for Public Policy Development with
24 the West Virginia Hospital Association.
25 On behalf of the West Virginia Hospital

1 Association and its 63 member hospitals, I appreciate the
2 opportunity to comment this morning on West Virginia
3 Legislative Rule Series 17 which implements certain
4 provision of House Bill 4230, which passed this past
5 legislative session. The bill amends West Virginia's
6 current CON law by adding language which requires CON review
7 for Health Care Services Offered By Health Care
8 Professionals.
9 The West Virginia Hospital Association supports
10 the rules as drafted by the Health Care Cost Review
11 Authority. We believe that the rules level the playing
12 field between acute care hospitals and health care
13 professionals. Hospitals are concerned with the
14 proliferation of imaging services, cancer treatment centers,
15 ambulatory surgical centers and diagnostic centers outside
16 the hospital setting. Hospitals are required to provide
17 health care services on a 24-hour emergency basis to the
18 entire population including the medically indigent while
19 private health care professionals do not have the same
20 obligation and sometimes select patients with private health
21 insurance and then referring the medically indigent and
22 those with, perhaps, Medicaid coverage to the hospital
23 emergency room.
24 We do have on commend under 4.3.8 covering
25 diagnostic centers. According to the rules, the definition

1 of a diagnostic center is a facility which offers laboratory
2 and/or imaging services and in which the total cost of the
3 laboratory and imaging equipment exceeds $750,000.
4 The task force established by the Health Care Cost
5 Review Authority which helped to draft these regulations --
6 and by the way, I appreciation the opportunity to
7 participate on that task force -- was considering looking at
8 the proposed Medicare rules on diagnostic equipment. But
9 because they were proposed and not actually in effect, HCCRA
10 felt that they could not be used. One suggestion would be
11 that perhaps after the Health Care Financing Administration
12 does release the Medicate rules on diagnostic equipment, the
13 Health Care Cost Review Authority may want to pull this same
14 task force back together again and perhaps look at a
15 different definition for a diagnostic center.
16 In summary, the West Virginia Hospital Association
17 supports the rules. We supported the legislation, although
18 it was not introduced by the Hospital Association. To be
19 honest about it, we didn't coach anybody. It was introduced
20 by a person that we talked to. We did support the
21 legislation and do support the rules.
22 I also appreciate the opportunity of participating
23 on the task force and I will be glad to answer any
24 questions.
25 CHAIRMAN FIZER: Mr. Dale?

1 MR. DALE: I have no questions.
2 CHAIRMAN FIZER: Ms. Stonestreet?
3 MS. STONESTREET: I have no questions.
4 CHAIRMAN FIZER: Thank you. That is the final one
5 that we have checked to make a comment. Are there others
6 that wish to comment on the rules that are before us today?
7 MR. CHANEY: Yes, sir.
8 CHAIRMAN FIZER: Would you come forward, sir?
9 MR. CHANEY: Good morning. My name is Mike
10 Chaney. I'm an attorney with Kay, Casto, Chaney, Love &
11 Wise here in Charleston, and our firm represents and does
12 work for the State Medical Association.
13 I just had a couple of comments. It appears to me
14 in the concern I have after reviewing the statutory
15 amendment and the rules interpreting that amendment, the new
16 rules, is that apparently the new rules would, in essence,
17 give the Board the authority to gut or completely eliminate
18 the exemption for private practice. Apparently these rules
19 would interpret the new amendment to allow the HCCRA to
20 specify any type of health care service as one that is in
21 exception to the exemption.
22 The thrust of it then would be to give HCCRA
23 unfettered ability to eliminate the private office practice
24 exemption. I don't think that's the intention of this
25 statute. It certainly would be inconsistent with the

1 statute. I think it may also well constitute an
2 unconstitutional delegation of legislative authority, if it
3 were to be interpreted in that manner. I also think it's
4 inconsistent with certain other statutory language that
5 refers to certain -- that is excepts from the exemption
6 certain specified health services whereas apparently HCCRA
7 has interpreted it to mean that they can except from the
8 exemption any or all health services in private office
9 practice.
10 I have a real concern that the proposed rule,
11 number one, interprets the statute, the new amendment,
12 improperly in a manner that is unconstitutional.
13 That's my only comment.
14 CHAIRMAN FIZER: Mr. Dale, do have any questions?
15 MR. DALE: Did you have something in mind that you
16 wanted to propose?
17 MR. CHANEY: No, I have no proposals to make.
18 MR. DALE: Thank you, sir.
19 CHAIRMAN FIZER: Ms. Stonestreet?
20 MS. STONESTREET: I have no questions.
21 CHAIRMAN FIZER: Thank you, sir. Are there others
22 that wish to make comments this morning?
23 (No response.)
24 There being none, then I will call for a closing
25 of the public hearing. Thank you.

1 (WHEREUPON, the public hearing
2 was concluded.)
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1 REPORTER'S CERTIFICATE

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3 STATE OF WEST VIRGINIA,

4 HEALTH CARE COST REVIEW AUTHORITY, to-wit:

5

6 I, Connie R. Doughty, do hereby certify that the

7 foregoing transcript to true and correct and taken by the

8 Stenomask procedure to the best of my skill and ability.

9 Given under my hand this 22nd day of July, 1990.

10

11

12 Connie R. Doughty, Certified Reporter

13 Notary Public

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My commission expires December 21, 1994.

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STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Building 3, Capitol Complex
Charleston, WV 25305

Gaston Caperton
Governor

July 25, 1990

The Honorable Ken Hechler
Secretary of State
State Capitol Complex
Building 1, Room 157-K
Charleston, West Virginia 25305

Re: HCCRA Rule: Health Services Offered By Health Professionals

Dear Secretary Hechler:

Enclosed please find a proposed rule of the Health Care Cost Review Authority regarding health services offered by health professionals. I hereby approve this rule for filing.

Very truly yours,

Taunja Willis Miller, Secretary
Department of Health and Human Resources

TWM/jah

Enclosure

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