WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 65

RULE TYPE: Legislative ; CITE AUTHORITY W. Va. Code, §§ 16-2D-5(j); 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: 18

TITLE OF RULE BEING PROPOSED: Conversion Of Acute Care Beds To 100 Skilled Nursing Care Beds

DATE OF PUBLIC HEARING: August 16, 1990 TIME: 9:30 a.m.

LOCATION OF PUBLIC HEARING: Health Care Cost Review Authority
Large Conference Room
100 Dee Drive, Suite 201
Charleston, WV 25311

COMMENTS LIMITED TO: ORAL___, WRITTEN___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Health Care Cost Review Authority
100 Dee Drive, Suite 201
Charleston, WV 25311
Attention:
Marianne K. Stonestreet

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

LARRY C. FIZER, Chairman

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Building 3, Capitol Complex
Charleston, WV 25305

Gaston Caperton
Governor

July 16, 1990

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

Re: HCCRA's Legislative Rule for Conversion of Acute Care Beds to 100 Skilled Nursing Care Beds

Dear Secretary Hechler:

Enclosed please find a proposed legislative rule of the Health Care Cost Review Authority for conversion of acute care beds to 100 skilled nursing care beds. I hereby approve this rule for filing as an emergency rule.

Very truly yours,

Taunja Willis Miller, Secretary
Department of Health and Human Resources

TWM/jah

Enclosure

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Conversion Of Acute Care Beds To 100 Skilled Nursing Beds

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 Increase	ANNUAL Decrease	FISCAL YEAR Current	FISCAL YEAR Next	FISCAL YEAR 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.

N/A

3. Objectives of these rules:

To permit certain hospitals to convert excess acute care beds to medicare certified only skilled nursing beds.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

Hospitals should be able to reduce their costs pursuant to this rule.

C. Economic Impact on Citizens/Public at Large.

The cost savings experienced by the hospitals should result in a reduction in the cost of health care.

Date July 16, 1990

Signature of Agency Head or Authorized Representative

LARRY C. FIZER, Chairman

SUMMARY OF PROPOSED RULE

Enrolled H. B. 4820 creates an exception to the moratorium on long-term care beds. This bill permits certain hospitals to convert excess acute care beds to medicare certified only skilled nursing beds. A total of one hundred beds may be converted statewide.

TITLE 65
WEST VIRGINIA LEGISLATIVE RULE
HEALTH CARE COST REVIEW AUTHORITY

SERIES 18

Title: CONVERSION OF ACUTE CARE BEDS TO 100 SKILLED NURSING CARE BEDS

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§ 65-18-1 General

1.1. Scope - This rule establishes the criteria and standards for certificate of need review for the conversion statewide of acute care beds to 100 skilled nursing care beds which are medicare certified only by licensed hospitals as provided by W. Va. Code § 16-2D-5(j).

1.2. Authority - W. Va. Code §§ 16-2D-5(j), 16-2D-8.

1.3. Filing Date _____.

1.4. Effective Date _____.

§ 65-18-2 Introduction

This rule implements Enrolled House Bill 4820 which was passed by the Legislature on March 10, 1990, and became effective ninety (90) days from passage. That bill created a new code section, W. Va. § Code 16-2D-5(j). This new section authorizes the state agency to promulgate rules for the certificate

of need review of applications for the conversion by hospitals of acute care beds to skilled care beds which are only medicare certified.

§ 65-18-3 Definitions

As used in these regulations, all terms have the same meaning as provided in the definition section (West Virginia Code section two, article two-d, chapter sixteen) of the statutes. Verbatim definitions, therefore, are not repeated here. Definitions set forth below amplify and clarify the statutory definitions or define terms not specifically set forth in the statute.

3.1. Acute-care bed complement - The number of licensed hospital beds designated for acute care services exclusive of SNF and/or ICF long-term care beds and personal care beds.

3.2. Licensed bed capacity - The total number of hospital beds currently authorized for a hospital to operate by the Division of Health and Human Resources.

3.3. Skilled nursing bed - A long-term care bed designated as an SNF (skilled nursing facility bed) and certified as such under Medicare Title XVIII reimbursement.

3.4. Hospital Based Skilled Nursing Care Region (HBSNCR) - The basic unit of analysis for the examination of a Certificate of Need application that proposes to convert acute care beds to medicare skilled nursing care beds as provided by W. Va. Code §16-2D-5(j).

3.5. Potentially Unneccessarily Duplicative (PUD) - The state agency, in considering the relationship of applications to each other, shall consider the extent to which proposals are unneccessarily duplicative of each other, and where the potential for such unneccessary duplication exists, the state agency shall conduct its review of such applications so as to make a comparative analysis which shall be included in the decision or decisions. The determination that applications are potentially unnecessarily duplicative shall be made before the review cycle begins.

§ 65-18-4 Review Procedures and Process

4.1. Letters of intent and preapplication conference.

Letters of intent must be filed not less than fifteen days prior to submitting an application, and shall contain sufficient information to inform the state agency of the name of the hospital, location, number of beds, scope, cost and timing of the project. In response to a letter of intent the state agency shall

forward an application form to the hospital. The state agency shall provide a preapplication conference if requested by the hospital in a timely manner.

4.2. Application required for Certificate of Need. Information required shall include the following:

(a) Identification of the applicant;

(b) Authorization to pursue project;

(c) Description of project;

(d) Timetable for implementation of the project;

(e) Analysis of the need for the project;

(f) Policies for patient admission and provision of fully or partially uncompensated care;

(g) Analysis of alternatives to the project;

(h) Analysis of the project's relationship to the existing long term skilled care services in the area;

(i) Analysis of the relationship of the project to the hospital's long-range plan;

(j) Analysis of competitive factors;

(k) Relationship of project to licensure, certification, accreditation and safety standards;

(l) Availability of resources and manpower;

(m) Preliminary financial feasibility study - the hospital must demonstrate that the proposed project is financially feasible and at a minimum provide the following:

(1) Statements of (a) revenues and expenses, (b) balance sheet, (c) statement of changes in fund balances, and (d) statement of cash flow for the last two years. Audited financial statements shall be submitted, if available;

(2) Preliminary financial feasiblity study and cash flow statements for the proposed medicare skilled nursing care unit for a three year period including, at a minimum, pro forma financial statements for the current fiscal year and three future years along with all assumptions upon which the projections were based.

(3) Impact analysis or study that demonstrates the effect of the proposed project on the hospital's overall financial condition.

4.3. Amendments to applications during review.

An applicant may amend its application during the first fifteen (15) days of the batch review cycle, either increasing or decreasing the number of beds it proposes to convert.

4.4. Review for completeness.

(a) Within fifteen days of receipt of the application, the state agency shall determine if the application is complete. The state agency may request additional information. Declaration of an application as being complete means that sufficient information is in the application for the state agency to make an informed decision, not that the information in the application warrants an approval of the application.

(b) The state agency shall not accept an application from a hospital subject to the financial disclosure provisions of W. Va. Code, § 16-5F-1 et seq. until such facility has filed all reports required therein.

(c) Applications for the conversion of acute care bed to medicare skilled nursing care beds, shall be reviewed in cycles beginning every (4) months or until the 100 beds have been approved. On the last working day of the week containing the first day of the months of January, May and September, the state agency shall collect all the applications determined to be complete since the previous collection. A sixty (60) day review cycle shall then begin on the applications in accordance with W. Va. Code, §§ 16-2D-7(g) and (h). Notification of the beginning of the review shall include whether the application is potentially unnecessarily duplicative of other applications.

(d) If, after a review has began, the state agency requires additional information from the applicant, such person shall be provided at least ten days to submit the information and the state agency shall, at the request of such person, extend the review period by ten days. This extension applies to all other applications which have been deemed to be potentially unneccessarily duplicative of the application subject to the extension of the review period.

(e) The state agency may conduct a hearing on the application in accordance with W. Va. Code, § 16-2D-7(l).

(f) To be effective, a request for a public hearing during the review of an application must be in writing and received by the state agency within thirty days of the date of notification of the beginning of the review as provided

in W. Va. Code § 16-2D-7(g). The request shall be addressed to: General Counsel, West Virginia Health Care Cost Review Authority, Certificate of Need Program, 100 Dee Drive, Suite 201, Charleston, West Virginia 25311.

(g) If a public hearing is not conducted during the review of an application, the state agency shall close the review of the application on the thirty-first day of the review. The state agency may extend the file closing for good cause.

4.5. Holds and extensions on review periods.

(a) Holds - at any time during a review of an application, the state agency may grant an applicant's request that a hold be put on the running of the review period on its application. The state agency may not grant a hold on the running of the review period in cases where the application has been deemed to be potentially unneccessarily duplicative without the concurrence of the other potentially unneccessarily duplicative applicants. An application under review and placed on hold for a period of more than one year shall be considered withdrawn, and a new letter of intent and application must be filed if the applicant desires to pursue the project.

(b) Extensions - If the state agency finds it is not practicable to complete a review on an application within the time provided in Section 4.3(c) of

these rules, the state agency may extend the review process for a maximum of thirty days.

(c) File closing date extensions - If an application is put on hold or the review period is extended, the state agency may extend the file closing date, and if the file closing date has passed when the review is extended or the hold is imposed, the state agency may reopen the file and reestablish the file closing date.

(d) If a public rehearing is scheduled or if a file closing date is extended or reestablished, or if a hold or extension is put on a review, all affected persons shall be notified of the reasons.

4.6. Reconsideration Requests

An affected person may request in writing a public hearing for purposes of reconsideration of the state agency decision in accordance with W. Va. Code, § 16-2D-7(r). The request shall be addressed to General Counsel, West Virginia Health Care Cost Review Authority, Certificate of Need Program, 100 Dee Drive, Suite 201, Charleston, West Virginia 25311. A request for a reconsideration hearing that does not show good cause within the meaning of W. Va. Code, § 16-2D-7(r) shall be denied.

§ 65-18-5 Criteria and Standards

Statement of Purpose: In order to ensure an appropriate supply of health services to the citizens of West Virginia while discouraging unneccessary duplication and high costs, the Health Care Cost Review Authority shall conduct a through public review and evaluation of proposed projects.

The goal of the Certificate of Need Program is to provide for the continued orderly development of the health care system in West Virginia through a public review of proposed applications that are evaluated in accordance with established Criteria and Standards. The purpose of the Criteria and Standards is twofold: (1) To serve as guidelines in the continued orderly development of the health care system in West Virginia in accordance with the Certificate of Need statute; and (2) To promote cost-effective alternatives to higher-cost services.

5.1. On a statewide basis a maximum of one hundred skilled nursing care beds which are medicare certified only may be approved through the conversion of acute care beds at existing hospitals that have no skilled nursing care beds.

(a) There shall be five "Hospital Based Skilled Nursing Care Regions".

(1) Hospital Based Skilled Nursing Care Region (HBSNCR) I is composed of McDowell, Wyoming, Raleigh, Mercer, Summers, Logan, Mingo, Wayne, Lincoln, Cabell, Mason, and Monroe Counties and includes the following hospitals:

Beckley Appalachian Regional Hospital

Raleigh General Hospital

Bluefield Regional Hospital

Humana Hospital - St. Lukes

Princeton Community Hospital

St. Mary's Hospital

Williamson Memorial Hospital

Cabell Huntington Hospital

Guyan Valley Hospital

Logan General Hospital

Man Appalachian Regional Hospital.

(2) Hospital Based Skilled Nursing Care Region (HBSNCR) II is composed of Putnam, Kanawha, Clay, Webster, Boone, Roane, Fayette, Nicholas, Greenbrier, and Pocahontas Counties and includes the following hospitals:

Charleston Area Medical Center

Putnam General Hospital

Boone Memorial Hospital

St. Francis Hospital

Thomas Memorial Hospital

Humana Hospital - Greenbrier Valley

Plateau Medical Center

Richwood Area Medical Center

Pocahontas Memorial Hospital

Webster County Memorial Hospital.

(3) Hospital Based Skilled Nursing Care Region (HBSNCR) III is composed of Jackson, Calhoun, Gilmer, Wood, Wirt, Ritchie, Pleasants, Braxton, Lewis, Upshur, Barbour, Taylor, Tucker, and Randolph Counties and includes the following hospitals:

Braxton County Memorial Hospital

Camden-Clark Memorial Hospital

Jackson General Hospital

St. Joseph's - Parkersburg

Broaddus Hospital

Davis Memorial Hospital

Stonewall Jackson Memorial Hospital.

(4) Hospital Based Skilled Nursing Care Region (HBSNCR) IV is composed of Pendleton, Harrison, Marion, Monongalia, Preston, Grant, Hardy, Mineral, Hampshire, Morgan, Berkeley and Jefferson Counties and includes the following hospitals:

City Hospital

Jefferson Memorial Hospital

Monongalia General Hospital

Potomac Valley Hospital

West Virginia University Hospital

Preston Memorial Hospital.

(5) Hospital Based Skilled Nursing Care Region (HBSNCR) V is composed of Tyler, Wetzel, Marshall, Ohio, Brooke and Hancock Counties and includes the following hospitals:

Ohio Valley Medical Center

Reynolds Memorial Hospital

Sistersville General Hospital

Wetzel County Hospital

Wheeling Hospital

Weirton Osteopathic Hospital.

(b) There shall be a minimum of ten beds and a maximum of twenty-five beds per unit.

(c) The hospital must convert at least one acute care bed into one medicare certified only skilled nursing care bed. 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 W. Va. Code, § 16-2D-3(d) 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 in W. Va. Code, § 16-2D-2(ee).

(d) Priority shall be given to proposals by hospitals located 25 miles or more from a hospital based medicare skilled nursing care unit.

(e) Priority shall be given to proposals by hospitals located in nursing home service areas with no medicare certified skilled nursing care beds.

(f) The hospital must use existing space for the medicare certified only skilled nursing care beds. Under no circumstances shall the hospital construct new space, lease or acquire additional space for the purpose of developing a skilled nursing care unit.

(g) The hospital must provide evidence that an acute care patient prior to transfer to the medicare skilled nursing care unit, will be notified of the existence of facilities with skilled nursing care beds which are located in or near the patient's county of residence and of the availability of admission to such nursing facility.

(h) The hospital must demonstrate a need for the number of medicare skilled nursing care beds proposed for the distinct-part unit.

§ 65-18-6 Fee

The fee to be paid by a hospital upon filing an application shall equal $100.00 for each proposed medicare certified only skilled nursing bed. A waiver of fees may be obtained if the hospital meets the criteria specified in W. Va. CSR § 65-10-5. A refund shall not be paid for any reason unless the applicant meets the criteria specified in W. Va. CSR § 65-10-6.1.