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(Plus all the volunteer
help we can get)

August 14, 1990

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug. 14, 1990
AD [unclear] [unclear]

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Health Care Cost Review Authority

RULE: New Rule, Series 18, Conversion of Acute Care Beds to
100 Skilled Nursing Care Beds

DATE FILED AS AN EMERGENCY RULE: July 16, 1990

DECISION NO. 32-90

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".

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DECISION EMERGENCY RULE DECISION (ERD 32-90)

AGENCY: Health Care Cost Review Authority
RULE: New Rule, Series 18, Conversion of Acute Care Beds to
100 Skilled Nursing Care Beds

FILED AS AN EMERGENCY RULE: July 16, 1990

- par. 1 The Health Care 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 July 16, 1990 and with the LRMRC on July 16, 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-5(j) reads:

(h) The state agency shall adopt rules within ninety days of the effective date of the amendment of this section, 1990, pursuant to section 8 of this article to specify the circumstances under which and the procedures by which a certificate of need may not be required for shared services between two or more acute care facilities providing services made available through existing technology that can reasonably be mobile. The state agency shall specify the types of items in the regulations and under what circumstances mobile MRI and mobile lithotripsy may be so exempted from review. In no case, however, will mobile cardiac catheterization be exempted from certificate of need review. In addition, if the shared services mobile unit proves less cost effective than a fixed unit, the acute care facility will not be exempted from certificate of need review.

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

§16-2D-8. Agency to promulgate additional rules and regulations.

(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.

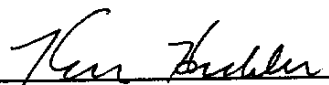
par. 12 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the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

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

The purpose of this rule is to permit certain hospitals to convert excess acute care beds to medicare certified only skilled nursing beds. Many hospitals have empty acute beds which previously could not be utilized for skilled nursing services under the moratorium (WV Code §16-2D-5(h)). Enrolled H.B. 4820 allows this exception to the moratorium and this rule implements H.B. 4820. Hospitals eligible to convert beds pursuant to this rule should realize a reduction in their costs. Accordingly, there should be a related reduction in the cost of health care provided by these hospitals.

par. 14 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency under "time limitation".

par. 15 This decision shall be cited as Emergency Rule Decision 32-90 or ERD 32-90 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 _____ THIS DATE Aug. 14, 1990
ADMINISTRATIVE LAW DIVISION