

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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1991 MAR 25 PM 4:31

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 65

CITE AUTHORITY: WV Code §16-29B-20(j); 16-29B-8(a)(1)

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: 19

TITLE OF RULE BEING FILED AS AN EMERGENCY: Review For Automatic

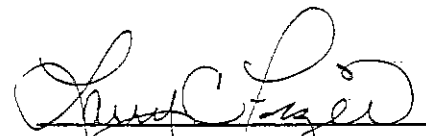
Rate Changes

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:

Enrolled Committee Substitute for H.B. 2194 became effective March 20, 1991. This bill amended WV Code §16-29B-20(j) by changing the inflation index utilized by the Health Care Cost Review Authority in reviewing automatic rate applications. The bill authorizes the agency to promulgate a rule which utilizes the lowest rate of inflation as established by a recognized inflation index for either the national or regional hospital industry.

Use Additional Sheets If Necessary.


LARRY C. FIZER, Chairman

3.60



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Building 3, Capitol Complex
Charleston, WV 25305

Gaston Caperton
Governor

March 28, 1991

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

Re: HCCRA's Rule for Review for Automatic Rate
Changes

Dear Secretary Hechler:

Enclosed please find a proposed legislative rule and emergency rule for review for automatic rate changes of the Health Care Cost Review Authority. The rules are identical in substance, only the title and effective date differ. I hereby approve this rule for filing as an emergency 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

Enclosures

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Review For Automatic Rate Changes

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					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. **Explanation of above estimates.**
 No cost to the agency is associated with this rule. The automatic rate review process is currently in effect. The changes in the process implemented by this rule will have no fiscal impact on the agency.

3. **Objectives of these rules:**
 This rule alters the inflation index utilized by the agency in reviewing automatic rate increase requests.

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.


This rule lowers the rate of inflation currently utilized
by small hospitals in automatic rate requests.

C. Economic Impact on Citizens/Public at Large.

Small hospitals will no longer be permitted to implement
large rate increases automatically.

Date March 25, 1991

Signature of Agency Head or Authorized Representative



LARRY C. FIZER, Chairman

DATE: March 25, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Health Care Cost Review Authority

EMERGENCY RULE TITLE: Review For Automatic Rate Changes

1. Date of filing: March 25, 1991
2. Statutory authority for promulgating the emergency rule: WV Code §16-29B-20(j); 16-29B-8(a)(1)
3. Date of filing of proposed legislative rule: March 25, 1991
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
Adopts 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.
See response to #8

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.

H.B. 2194 directs the agency to promulgate an emergency rule to
utilize the lowest rate of inflation when reviewing requests for
automatic rate changes. Previously the law directed the agency to
utilize a significantly higher rate of inflation which resulted in
higher increases for certain hospitals.

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

SERIES 19

Title: REVIEW FOR AUTOMATIC RATE CHANGES

§65-19-1 General

1.1. Scope - This legislative rule establishes an automatic review process for hospitals which are licensed for one hundred (100) beds or less and which are not located in a standard metropolitan statistical area where the rate of increase is equal to or less than the lowest rate of inflation as established by a recognized inflation index for either the national or regional hospital industry as provided by W. Va. Code §16-29B-20(j). This rule further repeals section 5 of the "Procedural Rule For Requests for Automatic Rate Changes," §65 C.S.R. 3.

1.2. Authority - W. Va. Code §16-29B-20(j) and §16-29B-8(a)(1).

1.3. Filing Date - March 25, 1991.

1.4. Effective Date - March 25, 1991.

1.5. This legislative rule repeals and replaces section 5 of the "Procedural Rule for Requests For Automatic Rate Changes," §65 C.S.R. 3.

HCCRA
Emer. Rule 16-29B
Series 19, Sec. 2

§65-19-2 Introduction

This legislative rule implements certain of the provisions of Enrolled Committee Substitute for H. B. 2194 which became effective on March 20, 1991. That bill amended W. Va. Code 16-29B-20 by amending subsection (j). This amended subsection authorizes the state agency to promulgate rules to develop an automatic review process for rate increase requests from hospitals licensed with one hundred (100) beds or less which are not located in a standard metropolitan statistical area where the rate of inflation is equal to or less than the lowest rate of inflation as established by a recognized inflation index for either the national or regional hospital industry.

§65-19-3 Definitions

As used in this rule, all terms have the same meaning as provided in the definition section of the Health Care Cost Review Authority Act, West Virginia Code, section three, article twenty-nine-b, chapter sixteen. Definitions of additional terms are set forth below and whenever those terms are used, the following definitions apply, except where the context may expressly otherwise require.

3.1. "Authority" means the West Virginia Health Care Cost Review Authority.

3.2. "DRI" refers to the inflation index for the hospital industry published by Data Resources/McGraw Hill.

3.3. "Gross Revenue" means a hospital's gross patient revenue plus all operating and nonoperating revenues from whatever source.

3.4. "Hospital" means:

3.4.1. A facility subject to licensure as such under the provisions of West Virginia Code, article five-b, chapter sixteen; or

3.4.2. Any acute care facility operated by the state government which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons; but, in either event, does not include state mental health facilities, facilities primarily engaged in rendering psychiatric diagnosis, treatment and care or state long-term care facilities.

3.5. "License" means the license issued by the state department of health pursuant to West Virginia Code, article five-b, chapter sixteen. The license is issued for a particular number by type of beds and/or type or services. The total number of beds specified on the license shall determine the licensed bed capacity of the hospital.

3.6. "Standard Metropolitan Statistical Area" means metropolitan statistical area (MSA) as designated by the U.S. Office of Management and Budget and the Federal Committee on Metropolitan Statistical Areas. An MSA is a geographical designation that represents an integrated social and economic unit with a large population nucleus. An area qualifies for recognition as an MSA if there is a city within the area of at least 50,000 population or an urban area of at least 50,000 with a total metropolitan population of at least 100,000.

§65-19-4 Requirements

Any hospital which is licensed for one hundred (100) beds or less and is not located in a standard metropolitan statistical area which wishes to change or amend any portion of its previously approved schedule of rates in an amount equal to or less than the rate of inflation as published by Data Resources/McGraw Hill shall do so in accordance with this rule.

4.1. The hospital must file an application, a copy of the proposed budget approved by the hospital's board, and a copy of its license with the Authority at least five (5) days prior to the beginning of its fiscal year. The application shall be on a form to be provided by the Authority. A minimum of three hundred sixty-five (365) days shall have elapsed since the hospital placed into effect its last rate increase.

4.2. At least five (5) days prior to the beginning of its fiscal year and five (5) days prior to instituting the increase, the hospital must notify the Authority of its intention to implement the increase.

4.3. The hospital must inform the Authority of its inpatient utilization during the fiscal year prior to the date of the notice and the anticipated inpatient utilization for the fiscal year affected by the increase. The hospital shall also inform the Authority of the amount of gross inpatient revenue it received for the fiscal year prior to the increase and the amount of gross inpatient revenue it expects to receive during the fiscal year affected by the increase.

4.4. Within thirty (30) days after implementing the increase in its gross inpatient revenues per discharge for its non-governmental payors, the hospital shall file an amendment to its schedule of rates reflecting the effect of the increase.

4.5. Rate of inflation - The hospital shall determine the applicable rate of inflation for the hospital industry by referring to the most recent publication of Data Resources/McGraw Hill. The hospital may request the Authority to provide it with the current Data Resources Index (DRI) prior to filing the application required by section 4.1 of this rule. The DRI shall be applicable for sixty (60) days from the date of this letter from the Authority

notifying the hospital of said figure. The rate of inflation so reported shall not be adjusted for the increasing costs of technology, nonsupervisory wages, malpractice premiums, new services, or any other reason.

4.6. Within thirty (30) days of receiving the hospital's schedule of rates as required by section 4.4, the Authority shall issue a decision approving or disapproving the increase put into effect by the hospital. The hospital is not prohibited from implementing the rate increase during this thirty (30) day period. The Authority's evaluation will be limited to the rate of increase for gross inpatient revenues per discharge for non-governmental payors and will establish that the increase is equal to or less than the rate of inflation as established by the DRI. The determination shall be made upon the facts presented by the hospital and the records on file with the Authority. The decision may be treated as a final order.

4.7. Notwithstanding the provisions of section 4.6 of this rule, if the board subsequently determines that the increase put into effect by the hospital actually exceeded the rate approved by the Authority, for whatever reason, the Authority may institute a review and investigation of the hospital's rates and budget and take such action as it deems necessary to establish a new rate schedule and also direct a refund to the hospital's patients or a temporary decrease in the hospital's rates. The decision resulting from any such review and investigation may be treated as a final order.

4.8. This section also applies to any hospital which seeks to increase or decrease its outpatient revenue or its nonpatient revenues from non-governmental sources. In addition, if the hospital experiences less inpatient utilization for the twelve (12) months following the increase than it had anticipated when the automatic rate of inflation increase was obtained, the hospital's average rate per discharge shall not later be increased to compensate for the decline in gross inpatient revenue without permission of the Authority.

4.9. For hospitals which have obtained an automatic rate of inflation increase, if the hospital actually experiences gross inpatient revenues per discharge for non-governmental payors in excess of the amount it was allowed, then the hospital is notified that it may be subject to all of the penalties provided for by the Act including refunds and temporary rate decreases as provided for by West Virginia Code, subsections (d) and (e) of section twenty-one, article twenty-nine-b, chapter sixteen, and also the criminal provisions of West Virginia Code, section twenty-seven, article twenty-nine-b, chapter sixteen. Such liability will be determined by reference to those sections and not by these rules.

4.10. While the automatic rate of inflation increase will be calculated upon the actual average revenue per discharge for the hospital's past fiscal year, the Authority will continue to monitor the hospital's compliance with the Authority's prior orders. Should such monitoring reveal that the hospital

HCCRA
Emer. Rule 16-29B
Series 19, Sec. 4

exceeded its prior revenue limits, then the Authority will take corrective action against the hospital as a result of that excess and will also take corrective action against the rates being charged by the hospital after any automatic rate of inflation increase.

§65-19-5 Failure to comply with rules.

Failure by a hospital or an interested party to comply with any of the requirements of these rules shall subject the hospital or the interested party to sanctions including the possibility of denial of all requested relief in an appropriate case. Failure by a hospital or an interested party to comply with the time limits set forth in this rule may also, in the discretion of the board, cause the time limits to be extended and the failing party shall be deemed to have waived the time periods set forth in the Act and these rules or the board may impose another appropriate sanction.

§65-19-6 Health care facility financial disclosure act.

Before any application for a rate increase will be accepted for review, the hospital must be in compliance with the Health Care Facility Financial Disclosure Act, West Virginia Code, § 16-5F-1 et seq. Failure to be in compliance with the Act shall cause the Authority to refuse to accept the application or request and to reject it.

§65-19-7 Additional information.

Should the Authority require additional information from a hospital or an interested party, then, in the discretion of the Authority the various time limits imposed by this rule shall be tolled until the information is received by the board.

§65-19-8 Time periods.

8.1 In each instance in this rule where a time period is stated, the period is intended to be a maximum period. In the event a given task is completed sooner than the stated period by the Authority, a hospital or an interested party, then the next time period, if any, shall begin to elapse upon the actual completion date.

8.2. Calculation of time periods - Whenever in this rule the date by which some action is directed to be taken or accomplished would fall on a Saturday, Sunday or a state holiday, then the time for taking or accomplishing the action shall be extended to the next day which is not a Saturday, Sunday or a state holiday.

§16-19-9 Decisions and records available.

Decisions and records of the Authority may be inspected in accordance with West Virginia Code, section three, article one, chapter twenty-nine-b and may be copied at a charge of twenty-five cents (\$.25) per page.

§16-19-10 Compliance reports.

Every hospital shall file a compliance report for each quarter of its fiscal year. The compliance report shall be filed within sixty (60) days after the end of each quarter of the fiscal year. The information requested for the compliance report shall be listed on forms to be provided by the Authority.

§16-19-11 Severability

If any provisions of this rule or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of this rule which can be given effect without the invalid provisions or application and to this end the provisions of this rule are declared to be severable.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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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 May 3, 1991
ADMINISTRATIVE LAW DIVISION

May 3, 1991

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Health Care Cost Review Authority

RULE: New Rule, Series 19, Review for Automatic Rate Changes

DATE FILED AS AN EMERGENCY RULE: March 25, 1991

DECISION NO. 19-91

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.

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

KEN HECHLER
Secretary of State

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

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STATE OF WEST VIRGINIA
SECRETARY OF STATE

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Special Assistant

(Plus all the volunteer
help we can get)

DECISION EMERGENCY RULE DECISION
(ERD 19-91)

AGENCY: Health Care Cost Review Authority
RULE: New Rule, Series 19, Review for Automatic Rate
 Review
FILED AS AN EMERGENCY RULE: March 25, 1991

- 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 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 HCCRA filed this emergency rule with supporting documents with the Secretary of State March 25, 1991 and with the LRMRC March 25, 1991.

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 16-29B-8(a)(1) reads in part:

(1) Adopt, amend and repeal necessary, appropriate and lawful policy guidelines, rules and regulations in accordance with §29A-3-1 of this Code.

par. 9 It is the determination of the Secretary of State that 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 HCCRA are as follows:

Enrolled Committee Substitute for HB 2194 became effective March 20, 1991. This bill amended WV Code §16-29B-20(j) by changing the inflation index utilized by the Health Care Cost Review Authority in reviewing automatic rate applications. The bill authorizes the agency to promulgate a rule which utilizes the lowest rate of inflation as established by a recognized inflation index for either the national or regional hospital industry. HB 2194 directs the agency to promulgate an emergency rule to utilize the lowest rate of inflation when reviewing requests for automatic rate changes. Previously the law directed the agency to utilize a significantly higher rate of inflation which resulted in higher increases for certain hospitals.

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). . . "prevent substantial harm to public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 19-91 or ERD 19-91 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

KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
Entered _____ THIS DATE *May 3, 1991*
ADMINISTRATIVE LAW DIVISION