

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**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 §§ 16-29B-20(j); 16-29B-8(a)(1)

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

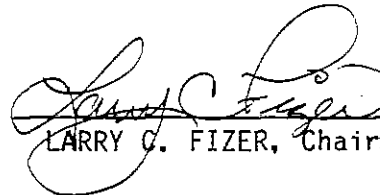
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 19

TITLE OF RULE BEING PROPOSED: Review For Automatic Rate Changes

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: 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.

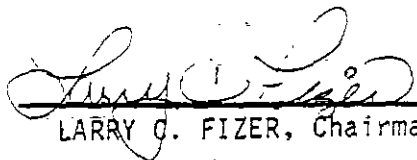
This rule lowers the rate of inflation currently utilized
by small hospitals in automatic rate requests.

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 G. FIZER, Chairman

DATE: May 1, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Health Care Cost Review Authority

LEGISLATIVE RULE TITLE: Review For Automatic Rate Changes

1. Authorizing statute(s) citation W. Va. Code §§ 16-29B-20(j);
16-29B-8(a)(1)

2. a. Date filed in State Register with Notice of Hearing:
March 25, 1991

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

Charleston newspapers; HCCRA newsletter (circulation approximately
1,000 including providers, payors and other interested persons);
West Virginia Hospital Association

c. Date of hearing (s): April 25, 1991

d. Attach list of persons who appeared at hearing, comments
received, amendments, reasons for amendments.

Attached _____ No comments received X

e. Date you filed in State Register the agency approved
proposed Legislative Rule following public hearing:
(be exact)

May 1, 1991

f. Name and phone number of agency person to contact
for additional information:

Marianne K. Stonestreet - 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 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 - _____.

1.4. Effective Date - _____.

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.

§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.

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Pro. Rule 16-29B
Series 19, Sec. 4

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

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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.

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Pro. Rule 16-29B
Series 19, Sec. 7

§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.

§65-19-9 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.

§65-19-10 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.

§65-19-11 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.



Gaston Caperton
Governor

Tanjia 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
Robert F. Hatfield

MEMORANDUM

TO: Legislative Rule-Making Review Committee

FROM: Health Care Cost Review Authority

RE: Brief Summary of Proposed Legislative Rule: Review For
Automatic Rate Changes; and Statement of Circumstances
Requiring The Rule

DATE: May 1, 1991

The proposed legislative rule implements certain requirements of Enrolled Committee Substitute for H. B. 2194, specifically W. Va. Code §16-29B-20(j). The rule establishes an automatic review for rate applications from hospitals of less than one hundred (100) beds and that are located outside a Metropolitan Statistical Area. The statute directs the agency to utilize the lowest rate of inflation established by a recognized inflation index for either the national or regional hospital industry. This is the inflation index published by Data Resources/McGraw Hill and is commonly known as the "DRI." This rule utilizes the "DRI."

MKS/jmh



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
Robert F. Hatfield

MEMORANDUM

TO: Legislative Rule-Making Review Committee

FROM: Health Care Cost Review Authority

RE: Amendments and Reasons For Amendments to
Proposed Legislative Rule: Review For
Automatic Rate Changes; and Statement of
Circumstances Requiring The Rule

DATE: May 1, 1991

No comments were received concerning this rule. Furthermore, no one attended the public hearing. No amendments were made to the proposed legislative rule.

MKS/jmh

WEST VIRGINIA HEALTH CARE COST REVIEW AUTHORITY

In the Matter of:

Title 65
West Virginia Legislative Rule
Health Care Cost Review Authority

Series 19

TITLE: REVIEW FOR AUTOMATIC RATE CHANGES

Transcript of proceedings had or evidence adduced on the 25th day of April, 1991, at 1:30 p.m. in the offices of the West Virginia Health Care Cost Review Authority, 100 Dee Drive, Charleston, Kanawha County, West Virginia, before Renee Lepley, Certified Court Reporter and Notary Public within and for the State of West Virginia.

APPEARANCES: WALTER DALE, Board Member
ROBERT F. HATFIELD, Board Member

MARIANNE STONESTREET, General Counsel
and Hearing Examiner
ROBERT PARKER, Executive Director

PHYLLIS HAYNES EDENS

CERTIFIED COURT REPORTERS
2133 KAY NEVA LANE
CHARLESTON, WEST VIRGINIA 25312
(304) 984-3531 WV (800) 248-3531

COPY

1 HEARING EXAMINER STONESTREET: This is a
2 public hearing scheduled on proposed legislative rule
3 review for automatic rate changes.

4 My name is Marianne Stonestreet. I
5 am general counsel for the Board of HCCRA and I will
6 conduct the public hearing in this matter.

7 Notice of the public hearing was
8 filed with the Secretary of State's office on
9 March 25, 1991. The review for automatic rate change
10 proposed rule is promulgated pursuant to West
11 Virginia Code 16-29B-20(j) and also 16-29B-8(a)(1).

12 Present today are Board members, Mr.
13 Walter Dale and Mr. Robert Hatfield, and also the
14 rate review staff.

15 I would note for the record that
16 there are no members of the public present and that
17 we have received no written comments regarding this
18 rule, and with that I will conclude this public
19 hearing.

20 (WHEREUPON, the hearing
21 was concluded at 1:32 p.m.)

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to wit:

I, Renee Lepley, a Certified Court Reporter and Notary Public within and for the State of West Virginia, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the testimony adduced or proceedings had in the aforementioned case as set forth in the caption hereof.

Given under my hand this 29th day of April, 1991.

My commission expires July 5, 1992.

Renee Lepley

Certified Court Reporter

Notary Public

