

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 65

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 NEW RULE BEING PROPOSED: 19

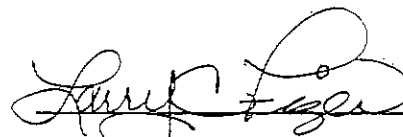
TITLE OF RULE BEING PROPOSED: Review For Automatic Rate Changes

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 1

SECTION 64-5-3(m), PASSED ON March 14, 1992

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: April 10, 1992



LARRY C. FIZER
Chairman

4.10

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 for 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, W. Va. Code, §16-29B-3. Definitions of additional terms are set forth in this section and whenever these terms are used, the definitions in this section 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 W. Va. Code, §16-5B-1 et seq.

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 W. Va. Code, §16-5B-1 et seq. The license is issued for a particular number of beds by type of beds and/or services. The total number of beds specified on the license determines the licensed bed capacity of the hospital.

3.6. "Standard Metropolitan Statistical Area" means a 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 wants 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 the hospital's 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 subsection 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 the figure. The rate of inflation 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 subsection 4.4 of this rule, the Authority shall issue a decision approving or disapproving the increase put into effect by the hospital. The hospital may implement 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 decision shall be made upon the facts presented by the hospital and the records on file with the Authority. The decision is an appealable order.

4.7. Notwithstanding the provisions of subsection 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 considers 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 the review and investigation is appealable.

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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 subject to all of the penalties provided for by W. Va. Code, §16-29B-1 et seq., including refunds and temporary rate decreases as provided for by W. Va. Code, §16-29B-21(d) and (e), and also the criminal provisions of W. Va. Code, §16-29B-27. Liability will be determined by reference to those sections and not by these rules.

4.10. While the automatic rate of inflation increase is 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 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 the penalties provided by W. Va. Code, §16-29B-1 et seq., and the 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 hospital or interested party is considered to have waived the time periods set forth in W. Va. Code, §16-29-B-1 et seq., 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, W. Va. Code, § 16-5F-1 et seq. If the hospital is not in compliance with all financial disclosure requirements the Authority shall 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 Where a time period is provided for in this rule, the period is intended to be a maximum period. In the event a given requirement is completed sooner than the stated period by the Authority, a hospital or an interested party, then the next time period, if any, begins to elapse upon the actual date the requirement is completed.

8.2. Calculation of time periods - Whenever in this rule the date by which some action is directed to be taken or accomplished falls on a Saturday, Sunday or a state holiday, then the time for taking or accomplishing the action is 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 W. Va. Code, §29B-1-3 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 is 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 severable.

Bill HCCRA Automatic Rate Changes 65-19

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H. B. 4282

(By Delegate Grubb)

(Introduced January 27, 1992; referred to the
Committee on Government Organization then the Judiciary)

10 A BILL to amend and reenact section three, article five, chapter
11 sixty-four of the code of West Virginia, one thousand nine
12 hundred thirty-one, as amended, relating to authorizing the
13 health care cost review authority to promulgate legislative
14 rules relating to the review for automatic rate changes.

15 Be it enacted by the Legislature of West Virginia:

16 That section three, article five, chapter sixty-four of the
17 code of West Virginia, one thousand nine hundred thirty-one, as
18 amended, be amended and reenacted, to read as follows:

19 ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN
20 RESOURCES TO PROMULGATE LEGISLATIVE RULES.

21 §64-5-3. Health care cost review authority.

22 (a) The legislative rules filed in the state register on the
23 twenty-first day of October, one thousand nine hundred

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1 eighty-three, relating to the health care cost review authority
2 (limitation on hospital gross patient revenue), are authorized.

3 (b) The legislative rules filed in the state register on the
4 nineteenth day of December, one thousand nine hundred
5 eighty-three, relating to the health care cost review authority
6 (freeze on hospital rates and granting temporary rate increases),
7 are authorized.

8 (c) The legislative rules filed in the state register on the
9 twenty-first day of December, one thousand nine hundred
10 eighty-four, relating to the health care cost review authority
11 (implementation of the utilization review and quality assurance
12 program), are authorized.

13 (d) The legislative rules filed in the state register on the
14 fifteenth day of August, one thousand nine hundred eighty-four,
15 relating to the health care cost review authority (hospital cost
16 containment methodology), are authorized.

17 (e) The legislative rules filed in the state register on the
18 twenty-fifth day of November, one thousand nine hundred
19 eighty-five, modified by the West Virginia health care cost
20 review authority to meet the objections of the legislative
21 rule-making review committee and refiled in the state register on
22 the twenty-eighth day of January, one thousand nine hundred
23 eighty-six, relating to the West Virginia health care cost review
24 authority (interim standards for lithotripsy services), are
25 authorized.

1 (f) The legislative rules filed in the state register on the
2 third day of September, one thousand nine hundred eighty-seven,
3 modified by the West Virginia health care cost review authority
4 to meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the twenty-seventh
6 day of January, one thousand nine hundred eighty-eight, relating
7 to the West Virginia health care cost review authority
8 (exemptions from certificate of need review), are authorized.

9 (g) The legislative rules filed in the state register on the
10 nineteenth day of September, one thousand nine hundred
11 eighty-eight, modified by the health care cost review authority
12 to meet the objections of the legislative rule-making review
13 committee and refiled in the state register on the twenty-first
14 day of February, one thousand nine hundred eighty-nine, relating
15 to the health care cost review authority (financial disclosure),
16 are authorized.

17 (h) The legislative rules filed in the state register on the
18 fourteenth day of August, one thousand nine hundred eighty-nine,
19 modified by the West Virginia health care cost review authority
20 to meet the objections of the legislative rule-making review
21 committee and refiled in the state register on the fifth day of
22 December, one thousand nine hundred eighty-nine, relating to the
23 West Virginia health care cost review authority (expedited review
24 for rate changes), are authorized with the amendments set forth
25 below:

1 On page 5, Section 4.1, after the words: "affected by the
2 increase." by inserting the following language: "The hospital
3 shall also reconcile any excesses in gross revenue, gross patient
4 revenue, gross inpatient revenue or charges per discharge.
5 Within fifteen days of submission the Authority shall inform the
6 hospital if it accepts the justification for excesses provided by
7 the hospital."

8 And,

9 On page 6, section 4.2, after the words "the excess in gross
10 outpatient revenue" by striking the period and inserting the
11 following:

12 "or if any excesses in the above categories (1 through 4)
13 have been sufficiently justified to the Authority as required in
14 Section 4.1 of this rule."

15 (i) The legislative rules filed in the state register on the
16 eleventh day of September, one thousand nine hundred eighty-nine,
17 modified by the West Virginia health care cost review authority
18 to meet the objections of the legislative rule-making review
19 committee and refiled in the state register on the fifth day of
20 December, one thousand nine hundred eighty-nine, relating to the
21 West Virginia health care cost review authority (exemption for
22 conversion of acute care beds to skilled nursing care beds), are
23 authorized.

24 (j) The legislative rules filed in the state register on the
25 thirtieth day of July, one thousand nine hundred ninety, modified

1 by the health care cost review authority to meet the objections
2 of the legislative rule-making review committee and refiled in
3 the state register on the twenty-fifth day of September, one
4 thousand nine hundred ninety, relating to the health care cost
5 review authority (exemption for shared services), are authorized.

6 (k) The legislative rules filed in the state register on the
7 thirty-first day of July, one thousand nine hundred ninety,
8 modified by the health care cost review authority to meet the
9 objections of the legislative rule-making review committee and
10 refiled in the state register on the twenty-fifth day of
11 September, one thousand nine hundred ninety, relating to the
12 health care cost review authority (health services offered by
13 health professionals), are authorized.

14 (l) The legislative rules filed in the state register on the
15 eleventh day of September, one thousand nine hundred ninety,
16 modified by the West Virginia health care cost review authority
17 to meet the objections of the legislative rule-making review
18 committee and refiled in the state register on the twenty-fourth
19 day of January, one thousand nine hundred ninety-one, relating to
20 the West Virginia health care cost review authority (conversion
21 of acute care beds to one hundred skilled nursing care beds), are
22 authorized.

23 (m) The legislative rules filed in the state register on the
24 first day of May, one thousand nine hundred ninety-one, modified
25 by the health care cost review authority to meet the objections

1 of the legislative rule-making review committee and refiled in
2 the state register on the twenty-second day of July, one thousand
3 nine hundred ninety-one, relating to the health care cost review
4 authority (review for automatic rate changes) are authorized.

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6 NOTE: The purpose of this bill is to authorize the Health
7 Care Cost Review Authority to promulgate legislative rules
8 relating to the review for automatic rate changes.

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10 Strike-throughs indicate language that would be stricken from
11 the present law, and underscoring indicates new language that
12 would be added.