

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 §16-29D-5(i), §16-2D-8

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: 20

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

DATE OF PUBLIC HEARING: May 24, 1991 TIME: 9:30 a.m.

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

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

Health Care Cost
Review Authority
100 Dee Drive, Suite 201
Charleston, WV 25311
ATTN: Marianne 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

April 16, 1991

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

Re: Proposed Rule for Conversion of Acute Care
Beds to Skilled Nursing Beds and Proposed
Rule for Development of Life Care
Retirement Centers for Certificate of Need
Matters

Dear Secretary Hechler:

Enclosed please find two proposed legislative rules for conversion of acute care beds to skilled nursing beds and development of life care retirement centers for certificate of need matters of the Health Care Cost Review Authority. I hereby approve these rules for filing as emergency and proposed rules.

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

SUMMARY OF PROPOSED RULE

The proposed legislative rule implements certain requirements of Enrolled Committee Substitute for H. B. 2194, particularly W. Va. Code §16-2D-5(i). The rule permits hospitals to apply for certificate of need review to convert acute care beds to skilled nursing care beds which are medicare certified only.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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

3. Objectives of these rules:

To permit 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 realize a reduction in 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 April 23, 1991

Signature of Agency Head or Authorized Representative


LARRY C. FIZER, CHAIRMAN

TITLE 65
WEST VIRGINIA LEGISLATIVE RULE
HEALTH CARE COST REVIEW AUTHORITY

SERIES 20

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

§ 65-20-1 General

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

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

1.3. Filing Date - _____.

1.4. Effective Date - _____.

§ 65-20-2 Introduction

This rule implements certain provisions of Enrolled Committee Substitute for House Bill 2194 which was passed by the Legislature on March 6, 1991, and was signed by the Governor on March 20, 1991. The bill created a new code section, W. Va. § Code 16-2D-5(i). This section authorizes

the Health Care Cost Review Authority 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.

§ 65-20-3 Definitions

As used in these regulations, all terms have the same meaning as provided in the definition section of West Virginia Code section two, article two-d, chapter sixteen (§16-2D-2). 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 skilled nursing facility (SNF) and/or intermediate care facility (ICF) long-term care beds and personal care beds.

3.2. DRG - Diagnostic related group - a classification system utilized by medicare to group patients with respect to resource use.

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

3.4. 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.

§ 65-20-4 Review Procedures and Process

4.1. Letters of intent and preapplication conference.

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

- (a) The identification of the applicant;
- (b) An authorization to pursue project;
- (c) A description of project;
- (d) A timetable for implementation of the project;
- (e) An analysis of the need for the project;
- (f) The policies for patient admission and provision of fully or partially uncompensated care;
- (g) An analysis of alternatives to the project;

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

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

(j) An analysis of competitive factors;

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

(l) The availability of resources and manpower;

(m) A 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 feasibility 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. Review for completeness.

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

(b) The Health Care Cost Review Authority 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 beds to medicare skilled nursing care beds, shall be reviewed on an expedited application in cycles beginning every week. A sixty (60) day review cycle shall then begin on the applications in accordance with W. Va. Code, §§ 16-2D-7(g) and (h).

(d) If, after a review has begun, the Health Care Cost Review Authority requires additional information from the applicant, the applicant shall be provided at least ten days to submit the information and the Health Care Cost

Review Authority shall, at the request of the applicant, extend the review period by ten days.

(e) The Health Care Cost Review Authority may conduct a hearing on the application in accordance with W. Va. Code, § 16-2D-7(l).

(f) A request for a public hearing during the review of an application must be in writing and received by the Health Care Cost Review Authority 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 Health Care Cost Review Authority shall close the review of the application on the thirty-first day of the review. The Health Care Cost Review Authority may extend the file closing for good cause.

4.4. Holds and extensions on review periods.

(a) Holds - at any time during a review of an application, the Health Care Cost Review Authority may grant an applicant's request that a hold be put on the running of the review period on its application. 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 Health Care Cost Review Authority 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 Health Care Cost Review Authority 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 Health Care Cost Review Authority 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 Health Care Cost Review Authority 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.

4.5. Reconsideration Requests

An affected person may request in writing a public hearing for purposes of reconsideration of the Health Care Cost Review Authority 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.

Statement of Purpose: In order to ensure an appropriate supply of health services to the citizens of West Virginia while discouraging unnecessary 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. An existing hospital may apply to convert acute care beds to skilled nursing beds.

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

(b) The hospital must convert at least one acute care bed into one medicare certified only skilled nursing care bed. The Authority may require a hospital to delicense up to and including three acute care beds for each medicare certified only skilled nursing bed.

(c) 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) 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.

(e) 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.

(f) The hospital shall meet all federal and state licensing certification and operational requirements applicable to nursing homes including a requirement that all skilled care beds converted shall be located in distinct-part, long-term care unit.

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

methodology for demonstrating need shall be quantitative and be directly related to the hospital proposing the conversion to skilled nursing care beds. The methodology shall be DRG based and involve 94 DRG's which have a high probability of resulting in skilled nursing services. A complete listing of the 94 DRG's is attached hereto. The first step is to determine a discharge base by finding the number of discharges with a length-of-stay of 8 days or more. A need projection can then be calculated by multiplying the number of discharges of 8 days or more times 15, the average length of stay for a skilled nursing unit. This product is divided by 365 days and again divided by .90 (average acceptable occupancy rate for a skilled nursing unit) to determine the projected need for skilled nursing beds which the hospital can demonstrate from its own patient data.

(h) A hospital with an existing skilled nursing care unit is not eligible to apply for additional skilled nursing care beds until the existing unit exceeds an aggregate average occupancy rate of 90% for the previous twelve months.

(i) A hospital which converts acute care beds to medicare certified only skilled nursing beds is prohibited from billing for any medicaid reimbursement for any beds so converted pursuant to this rule.

SKILLED NURSING UNIT DRG'S

<u>DRG GROUP NUMBER</u>	<u>DESCRIPTION</u>
009	Spinal Disorders & Injuries
010	Nervous System Neoplasms With CC
012	Degenerative Nervous Neoplasms With CC
014	Specific Cerebrovascular Disorders Except TIA
018	Cranial & Peripheral Nerve Disorders With CC
024	Seizure & Headache Age >17 With CC
034	Other Disorders Of Nervous System With CC
044	Acute Major Eye Infections
075	Major Chest Procedures
078	Pulmonary Embolism
079	Respiratory Infections & Inflammations Age >17 With CC
082	Respiratory Neoplasms
083	Major Chest Trauma With CC
085	Pleural Effusion With CC
087	Pulmonary Edema & Respiratory Failure
088	Chronic Obstructive Pulmonary Disease
089	Simple Pneumonia & Pleurisy Age >17 With CC
094	Pneumothorax With CC
096	Bronchitis & Asthma Age >17 With CC
101	Other Respiratory System Diagnoses With CC
106	Cornary Bypass With Cardiac Cath
107	Cornary Bypass W/O Cardiac Cath
110	Major Cardiovascular Procedures With CC
113	Amputation For Circ System Disorders Except Upper Limb & Toe
115	Perm Cardiac Pacemaker Implant With Ami, Heart Failure or Shock
121	Circulatory Disorders With Ami & C.V. Comp. Disch. Alive
126	Acute & Subacute Endocarditis
127	Heart Failure & Shock
128	Deep Vein Thrombophlebitis
130	Peripheral Vascular Disorders With CC
132	Atherosclerosis With CC
134	Hypertension

**DRG
GROUP
NUMBER**

DESCRIPTION

135	Cardiac Congenital & Valvular Disorders Age >17 With CC
138	Cardiac Arrhythmia & Conduction Disorders With CC
140	Angina Pectoris
144	Other Circulatory System Diagnoses With CC
146	Rectal Resection With CC
148	Major Small & Large Bowel Procedures With CC
150	Peritoneal Adhesiolysis Age >69 And/Or CC
164	Appendectomy With Complicated Princ. Diag Age >69 /And/Or CC
172	Digestive Malignancy Age >69 And/Or CC
174	G.I. Hemorrhage Age >69 And/Or CC
179	Inflammatory Bowel Disease
180	G.I. Obstruction With CC
182	Esophagitis, Gastroent. & Misc. Digest. Disorders Age >17 With CC
188	Other Digestive System Diagnoses Ages >69 And/Or CC
191	Major Pancreas, Liver & Shunt Procedures With CC
195	Total Cholecystectomy W C.D.E.With CC
197	Total Cholecystectomy W/O C.D.E. With CC
203	Malignancy Of Hepatobiliary System Or Pancreas
204	Disorders Of Pancreas Except Malignancy
205	Disorders Of Liver Exc Malig. Cirr. Alc Hepa With CC
207	Disorders Of the Biliary Tract With CC
209	Major Joint And Limb Reattachment Procedures
210	Hip & Femur Procedures Except Major Joint Age >17 With CC
213	Amputations For Musculoskeletal System & Conn. Tissue Disorders
217	Wnd Debrid & Skn Grft Exc Hand, For Muscskeletal & Conn. Tiss. Dis.
221	Major Shoulder/Elbow Proc. Or Other Upper Extremity Proc. W CC
223	Upper Extremity Proc Exc Humerus + Hand Age >69 And/Or CC
233	Other Musculoskelet Sys & Conn Tiss O.R. Proc With CC
235	Fractures Of Femur
236	Fractures Of Hip & Pelvis
238	Osteomyelitis
239	Pathological Fractures & Musculoskeletal & Conn. Tiss. Malignancy
240	Connective Tissue Disorders With CC

**DRG
GROUP
NUMBER**

DESCRIPTION

242	Septic Arthritis
244	Bone Diseases & Specific Arthropathies With CC
257	Total Mastectomy For Malignancy With CC
259	Subtotal Mastectomy For Malignancy With CC
263	Skin-Grafts And/Or Debrid Ulcer Or Cellulitis With CC
271	Skin Ulcers
272	Major Skin Disorders With CC
274	Malignant Breast Disorders With CC
277	Cellulitis Age >17 With CC
285	Amputation Of Lower Limb For Endocrine, Nutritional & Metabolic Dis.
294	Diabetes Age = >35
296	Nutritional & Misc. Metabolic Disorders With CC
300	Endocrine Disorders Age >69 And/Or CC
306	Prostatectomy With CC
310	Transurethral Procedures With CC
318	Kidney & Urinary Tract Neoplasms Age >17 With CC
320	Kidney & Urinary Tract Infections Age >17 With CC
331	Other Kidney & Urinary Tract Diagnoses Age >17 With CC
336	Transurethral Prostatectomy With CC
346	Malignancy, Male Reproductive System With CC
366	Malignancy, Female Reproductive System With CC
400	Lymphoma And Leukemia With Major O.R. Procedure
401	Lymphoma And Non-Acute Leukemia With Other O.R Proc With CC
403	Lymphoma And Non-Acute Leukemia With CC
416	Septicemia Age >17
423	Other Infectious & Parasitic Diseases Diagnoses
444	Traumatic Injury Age >17 With CC
449	Poisoning And Toxic Effects Of Drugs Age >69 And/Or CC
462	Rehabilitation