

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #7

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AN EMERGENCY RULE**

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 65

CITE AUTHORITY: W. Va. Code §16-2D-5(j); 16-2D-8

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: 21

TITLE OF RULE BEING FILED AS AN EMERGENCY: Development Of Life  
Care Retirement Centers

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 directs the agency to promulgate a rule to implement certificate of need review for the development of life care centers. The skilled nursing component of these centers cannot be developed without implementation of this rule.

Use Additional Sheets If Necessary.

  
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

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Development Of Life Care Retirement Centers

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.

N/A

3. Objectives of these rules:

To establish the criteria and standards for certificate of need review for the development of life care retirement centers with associated medicare certified only nursing units.

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.

N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date April 23, 1991

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_  
LARRY C. FIZER, Chairman

DATE: April 23, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Health Care Cost Review Authority

EMERGENCY RULE TITLE: Development of Life Care Retirement Centers

1. Date of filing: April 23, 1991

2. Statutory authority for promulgating the emergency rule: W. Va. Code §16-2D-5(j); 16-2D-8

3. Date of filing of proposed legislative rule: April 23, 1991

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?  
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

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Enrolled Committee Substitute for H. B. 2194 mandates the agency  
to promulgate a rule to permit certificate of need review for life  
care retirement centers. The skilled nursing component of these  
centers cannot be developed without implementation of this rule.

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

SERIES 21

Title: DEVELOPMENT OF LIFE CARE RETIREMENT CENTERS

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§65-21-1 General

1.1. Scope - This rule establishes the criteria and standards for certificate of need review for the development of life care retirement centers with associated medicare certified only skilled nursing units as provided by W. Va. Code §16-2D-5(j).

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

1.3. Filing Date - April 23, 1991.

1.4. Effective Date April 23, 1991.

§65-21-2 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 subsection, W. Va. Code §16-2D-5(j). This subsection authorizes the Health Care Cost Review Authority to promulgate rules for the certificate of need review of applications for the development of life care retirement centers and associated medicare certified only skilled nursing units.

§65-21-3      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.      Life care retirement center - A residential center that provides independent living, congregate housing facilities and a skilled nursing unit which is designed to provide a continuum of health and social services exclusively to its residents.

3.2.      Skilled nursing bed - A long-term care bed designated as a SNF (skilled nursing facility bed) and certified as such under Medicare Title XVIII reimbursement.

§65-21-4      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 eligibility criteria;
- (g) An analysis of alternatives to the project;
- (h) An analysis of competitive factors;
- (i) The relationship of project to licensure, certification, accreditation and safety standards;
- (j) The availability of resources and manpower;

(k) A preliminary financial feasibility study - the applicant 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 if available. Audited financial statements shall be submitted, if available;

(2) Preliminary financial feasibility study and cash flow statements for the proposed life care retirement center and medicare skilled nursing care unit for a three year period including, at a minimum, pro forma financial statements for the first three years along with all assumptions upon which the projections were based.

#### 4.3. Amendments to applications during review.

An applicant may amend its application during the first fifteen (15) days of the batch review cycle, either increasing or decreasing the number of beds it proposes to convert.

#### 4.4 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) If applicable, the Health Care Cost Review Authority shall not accept an application from a health care facility 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) An application for the development of a life care retirement center with associated medicare certified only skilled nursing units shall be reviewed as an expedited application in cycles beginning every week. A sixty (60) day review cycle shall then begin on the application 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.

4.5. 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 4.4(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.

#### 4.6. 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.

#### §65-21-5 Criteria and Standards

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. On a statewide basis, a maximum of one hundred eighty skilled beds which are medicare certified only may be developed in conjunction with the development of a life care retirement center.

5.2. There shall be a minimum of twenty beds and a maximum of sixty beds in each approved life care retirement center.

5.3. The life care retirement center shall meet all federal and state licensing certification and operational requirements applicable to nursing homes.

5.4. The life care retirement center must demonstrate a need for the project:

(1) The applicant must demonstrate a need or demand for the life care retirement center through a market analysis that targets specific populations.

(2) The applicant must demonstrate a need for the number of medicare certified only skilled nursing care beds proposed exclusively for use by the residents of the life care retirement center.

5.5. The life care retirement center must offer personal care, home health services and other lower levels of care to its residents such as chore and homemaker services.

5.6. The life care retirement center must demonstrate both short and long-term financial feasibility.

(1) The short-term financial feasibility shall include evidence of the applicant's resources and ability to finance the construction and operation of the life care retirement center in accordance with section 4.2.(k) (1) and (2) of this rule.

(2) The long-term financial feasibility shall include evidence of the applicant's policies and procedures to safeguard the resident's and organization's assets.

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 29, 1991  
ADMINISTRATIVE LAW DIVISION

May 29, 1991

#### NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE


AGENCY: Health Care Cost Review Authority

RULE: New Rule, Series 21, Development of Life Care Retirement Centers

DATE RULE FILED AS AN EMERGENCY RULE: April 28, 1991

DECISION NO. 22-91

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.

  
KEN HECHLER  
Secretary of State

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#### DECISION

#### EMERGENCY RULE DECISION (ERD 22-91)

AGENCY: Health Care Cost Review Authority  
RULE: New Rule, Series 21, Development of Life Care  
Retirement Centers

FILED AS AN EMERGENCY RULE: April 28, 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 April 28, 1991 and with the LRMRC April 28, 1991.

par. 6 HCCRA filed this emergency rule with supporting documents with the Secretary of State April 28, 1991 and with the LRMRC April 28, 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 §16-2D-5(j) reads:

*(j) Notwithstanding the provisions of subsection (g), section five of this article, a retirement life care center with no skilled nursing beds may apply to the health care cost review authority for a certificate of need for up to sixty skilled nursing beds provided the proposed skilled beds are medicare certified only. On a statewide basis, a maximum of one hundred eighty skilled beds which are medicare certified only may be developed pursuant to this subsection. The state health plan shall not be applicable to projects submitted under this subsection. The health care cost review authority shall adopt rules to implement this subsection.*

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

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

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:

Enrolled Committee Substitute for HB 2194 directs the agency to promulgate a rule to implement certificate of need review for the development of life care centers. The skilled nursing component of these centers cannot be developed without implementation of this rule.

par. 14 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). . . "time limitation" under HB 2194 and to "prevent substantial harm to public interest."

par. 15 This decision shall be cited as Emergency Rule Decision 22-91 or ERD 22-91 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  
Secretary of State

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE May 29, 1991  
ADMINISTRATIVE LAW DIVISION

Entered \_\_\_\_\_