

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

Form #8

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1991 JUN 27 PM 4: 33

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

July 1, 1991 *ja*

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 65

DATE EMERGENCY RULE WAS ORIGINALLY FILED: April 23, 1991

IS THIS THE FIRST EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

Yes

IS THIS THE SECOND EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

DATE OF FIRST EMERGENCY AMENDMENT: June 27, 1991

SERIES NUMBER OF RULE: 21 TITLE OF RULE: Development of Life

Care Retirement Centers

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

H. B. 2194 directs the agency to promulgate a rule to implement certificate of need review for the development of life care centers. The amendment is necessary to clarify the rule regarding the long-term care nursing component and to bring the rule into conformity with the "Certificate of Need" rule, §65 C.S.R. 7.

Use Additional Sheets If Necessary.

Larry C. Fizer
Signature

LARRY C. FIZER, Chairman

4.00

DATE: April 23, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FILED

FROM: Health Care Cost Review Authority

1991 JUN 27 PM 4: 34

EMERGENCY RULE TITLE: Development of Life Care Retirement Centers

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

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.

FILED

1991 JUN 27 PM 4:34

TITLE 65
WEST VIRGINIA LEGISLATIVE RULE
HEALTH CARE COST REVIEW AUTHORITY

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 21

Title: DEVELOPMENT OF LIFE CARE RETIREMENT CENTERS

S65-21-1 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 - _____.

1.4. Effective Date _____.

S65-21-2 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~~ long term care nursing unit which is certified only for medicare skilled beds and 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.

4.1. ~~Letters of intent and preapplication conference.~~

An application for a certificate of need shall be on forms approved by the board. The original and three (3) copies of the application must be submitted to the board. The application shall be verified under oath by the Chief Executive Officer.

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.~~

5.1. After the review of an application has begun, the board may require the applicant to submit additional information. If no hearing is requested upon the application, and the applicant fails to submit the information within the time directed, or if the applicant submits a substantial amendment to its application, the board may:

(a) Extend the review cycle pursuant to the provisions of W.Va. C.S.R. 65-7-13;

(b) Enter an order closing the file ten (10) days from the entry of such order; or

(c) Withdraw the application from review.

5.2. The board may examine the extent of additional information provided or any amendment made by the applicant regarding the application currently under consideration by the board and its impact, and determine the application to be a new proposal subject to a new review cycle. The board shall notify the applicant of any such determination, in writing, and further advise the applicant of the dates in the new review cycle. A notice shall also be published by the board pursuant to W. Va. C.S.R. 65-7-11.6.

S65-21-6 Application Withdrawal

6.1. An application under consideration by the board may be withdrawn by the applicant at any time prior to the issuance of a final decision and written findings. The withdrawal of such application shall be without prejudice.

6.2. A written notice withdrawing the application must be filed with the board before the issuance of a final decision.

S65-21-7 Batching of Applications

7.1. All applications shall be batched in the appropriate batching category pursuant to W. Va. C.S.R. §65-7-10.

7.2. Applications shall be reviewed in four annual cycles. On the first Friday of the months of February, May, August and November, the board shall collect by batching categories all applications determined to be complete since the previous cycle. The board shall then establish a ninety (90) day review cycle for each category. For consideration in any batch cycle, the application must be submitted no later than fifteen (15) days prior to the beginning of the batch.

8.1. Applicants must file with the board a letter of intent at least fifteen (15) days before the submission of a formal application. The letter of intent shall contain sufficient information to advise the board of the nature, scope, cost and timing of the project, as well as the location and name of the proposed applicant. Letters of intent shall be effective for one year from the date of their filing.

8.2. Upon receipt of a certificate of need application, the board shall determine whether the application is complete or whether additional information will be required. A declaration by the board that an application is complete means that there is sufficient information contained in the application for the board to make an informed decision. It does not mean that the approval of the application is warranted. Except in emergency situations that pose a threat to the public health, an application shall not be declared complete if:

(a) A long-range plan with a sufficient level of detail acceptable to the board and adopted by the applicant within the preceding five (5) years is not on file with the board;

(b) The applicant is a health care facility subject to the financial disclosure provisions of W. Va. Code §16-5F-1 et seq., or W. Va. Code §16-29B-1 et seq., and the health care facility has failed to file with the board all reports, records, data or other information required therein.

8.3. A determination of completeness must be made by the board within fifteen (15) days of its receipt of the application. If the board determines that the application is not complete, it shall request additional information or ask additional questions. Upon receipt of the additional information, the board shall have fifteen (15) days within which to determine if the application is complete. If the applicant fails to respond within one hundred eighty (180) days, the application shall be deemed withdrawn. If the applicant later desires to pursue the project, a new letter of intent and application must be filed.

8.4. Upon a determination by the board that an application is complete, the board shall publish a notice declaring its completeness in the Saturday Charleston newspapers, and the State Register. The notice shall, at a minimum, contain the following:

- (a) The name of the applicant;
- (b) A description of the proposed project;
- (c) The date the review cycle begins;
- (d) The last date for an affected person to request a public hearing;
- (e) The file closing date if no public hearing is requested;

(f) The date upon which a decision will be issued by the board;
and,

(g) If applicable, that the application has been deemed
potentially unnecessarily duplicative of other applications under review.

8.5. Once a determination of completeness has been made by the
board and the appropriate notice published or mailed, the board shall provide a
minimum of thirty (30) days from the beginning of the review period for affected
persons to request a public hearing. A request for a public hearing must be in
writing and 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.

8.6. The board shall hold a public hearing on an application if
requested to do so by any affected person. The board may also hold a public
hearing upon its own initiative.

8.7. If a public hearing is held on an application, and other
applications have been determined to be potentially unnecessarily duplicative
thereof, the public hearing shall be held on the application and all other
applications that are potentially unnecessarily duplicative.

8.8. When a public hearing is scheduled to be conducted upon an
application, the board shall, prior to the hearing, provide notice to all parties and

publish notice in the Saturday Charleston newspapers and the State Register.

The notice shall, at a minimum, contain the following:

- (a) The name of the applicant;
- (b) A description of the proposed project;
- (c) The date of the public hearing;
- (d) The date of any prehearing conference; and,

The hearing shall be conducted in accordance with the requirements for administrative hearings found in W. Va. Code §29A-5-1 et seq., and the provisions of W. Va. 65 C.S.R. 11.

§65-21-9 Stays and Extensions of Review Periods

9.1. At any time during the board's review of an application, the board may grant the applicant's request that the running of the review period be stayed. An application under review and stayed at the request of the applicant for a total period exceeding one hundred eighty (180) days during any review period shall be considered withdrawn, and a new letter of intent and application must be filed if the applicant desires to pursue the project.

9.2. Upon a finding by the board that it would not be practicable to complete the review of an application within the time provided by this rule, the

board may extend the review process for up to an additional thirty (30) days. All applications within the batching category that are in the same review cycle shall be similarly extended.

9.3. Situations which would make it impracticable for the board to complete its review within the time provided by this rule include, but are not limited to the following:

(a) A project is of such a comprehensive nature that to review it within the time provided by this rule would not do justice to the applicant or to the population which the proposed project would serve;

(b) Additional information has been requested from the applicant and the applicant has failed to provide the information to the board in the time frame directed by the board; and,

(c) Weather conditions or other natural disasters have prevented the review process from taking place in a timely manner.

9.4. If the board grants a stay or issues an extension of the review period, it may also extend the file closing date. If the file closing date has already passed when the stay is imposed or the review is extended, the board may reopen the file and reestablish the file closing date.

9.5. If a public hearing is rescheduled, a file closing date is extended or reestablished, or a stay or extension is placed on a review, the board shall notify all affected persons of the reasons therefor.

S65-21-510 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.

510.1. On a statewide basis, a maximum of one hundred eighty ~~skilled long term care~~ beds ~~which are medicare certified only~~ may be developed in conjunction with the development of a life care retirement centers. The long term care beds shall be certified only as medicare skilled nursing beds.

§10.2. There shall be a minimum of twenty beds and a maximum of sixty (60) long term care nursing beds in each approved life care retirement center.

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

§10.4. 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.

(3) The number of proposed nursing care beds must bear a reasonable relationship to the number of residents of the life care retirement center.

§10.5. The life care retirement center must offer long term nursing care, personal care, home health services, independent living units and other lower levels of care to its residents such as chore and homemaker services.

510.6. 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
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

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Director, Corporations

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Special Assistant

(Plus all the volunteer
help we can get)

July 1, 1991

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 1, 1991
ADMINISTRATIVE LAW DIVISION

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 WAS ORIGINALLY FILED AS AN EMERGENCY RULE: April 23, 1991

DATE EMERGENCY AMENDMENT WAS FILED: June 27, 1991

DECISION NO. 40-91

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

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
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Special Assistant

(Plus all the volunteer
help we can get)

DECISION EMERGENCY RULE DECISION
(ERD 40-91)

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

ORIGINALLY FILED AS EMERGENCY RULE: April 23, 1991
FILED AS AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE: June 27, 1991

- par. 1 The Health Care Cost Review Authority (HCCRA) has filed amendments to the above emergency rule.
- par. 2 West Virginia Code 29A-3-a 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-a(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 The HCCRA filed this emergency rule with supporting documents with the Secretary of State June 27, 1991 and with the LRMRC June 28, 1991.

par. 7 It is the determination of the Secretary of State that the 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 eight 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 It is the determination of the Secretary of State that the 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 the HCCRA are as follows:

HB 2194 directs the agency to promulgate a rule to implement certificate of need review for the development of life care centers. The amendment is necessary to clarify the rule regarding the long-term care nursing component and to bring the rule into conformity with the "Certificate of Need" rule, §65 C.S.R. 7.

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). . . "immediate preservation of public peace, health, safety or welfare" and "prevent substantial harm to public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 40-91 or ERD 40-91 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

Entered _____

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
JULY 11 1991
THIS DATE
ADMINISTRATIVE DIVISION