

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: 21

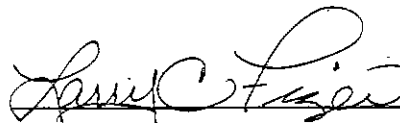
TITLE OF RULE BEING PROPOSED: Development of Life Care Retirement Centers

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(q), 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

3-80

TITLE 65
WEST VIRGINIA LEGISLATIVE RULE
HEALTH CARE COST REVIEW AUTHORITY

SERIES 21

Title: DEVELOPMENT OF LIFE CARE RETIREMENT CENTERS

§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 - _____.

1.4. Effective Date _____.

§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 in this section 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 must 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 the project;
- (c) A description of the 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 the 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) A 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 Dec 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 65 C.S.R. 7, section 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 the additional information provided or any amendment made by the applicant regarding the application currently under consideration by the board and its impact, and determine that the application is 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 65 C.S.R. 7, subsection 11.6.

§65-21-6

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 the application is without prejudice.

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

§65-21-7

Batching of Applications

7.1. All applications shall be batched in the appropriate batching category pursuant to 65 C.S.R. 7, section 10.

7.2. Applications will be reviewed in four annual cycles. On the first Friday of the months of February, May, August and November, the board will 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 a letter of intent with the board at least fifteen (15) days before the submission of a formal application. The letter of intent must 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 are 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 is 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 by the Code.

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 has 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 is considered 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 is considered 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 65 C.S.R. 7.

§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 is 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.

§65-21-510 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.

510.2. 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.

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

510.4. 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.

510.5. 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~~ includes 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~~ includes evidence of the applicant's policies and procedures to safeguard the resident's and organization's assets.



KEN HECHLER
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help we can get)

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

RECEIVED
 003 MAY 20 11:12 AM '93
 HEALTH CARE COST
 AUTHORITY

TO: Marianne Stonestreet

AGENCY: HCCRA

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: May 17, 1993

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 21 TITLE: 65 HCCRA

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Marianne K. Stonestreet

TITLE OF PERSON SIGNING: General Counsel

DATE: 5-27-93

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

53070

Bill HCCRA, Retirement Centers 65-21

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H. B. 4283

(By Delegate Grubb)

(Introduced January 27, 1992; referred to the
Committee on Health & Human Resources 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 development of life care retirement
15 centers.

16 Be it enacted by the Legislature of West Virginia:

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

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

22 §64-5-3. Health care cost review authority.

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

1 objections of the legislative rule-making review committee and
2 refiled in the state register on the twenty-third day of
3 September, one thousand nine hundred ninety-one, relating to the
4 health care cost review authority (development of life care
5 retirement centers) are authorized.

6

7 NOTE: The purpose of this bill is to authorize the Health
8 Care Cost Review Authority to promulgate legislative rules
9 relating to the development of life care retirement centers.

10

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