

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

Form #1

Do Not Mark In this Box

FILED  
1992 JUL 15 PM 2:38

**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 §§16-29B-8(a)(1)  
AMENDMENT TO AN EXISTING RULE: YES  NO  19a, 20

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 22

TITLE OF RULE BEING PROPOSED: Temporary Approval of Discount Contracts  
for Border Hospitals

DATE OF PUBLIC HEARING: August 17, 1992 TIME: 9:30 a.m.

LOCATION OF PUBLIC HEARING: Health Care Cost Review Authority  
Large Conference Room  
Suite 201, 100 Dee Drive  
Charleston, WV 25311-1692

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

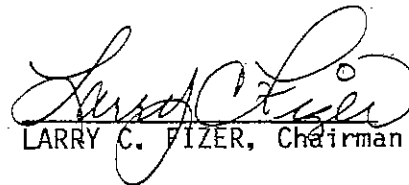
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Charles M. Johnson, Jr.  
Health Care Cost Review Authority  
Suite 201, 100 Dee Drive

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.

Charleston, WV 25311-1692

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

  
LARRY C. FIZER, Chairman

4.20



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Gaston Caperton  
Governor

July 15, 1992


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

Re: HCCRA's Rule for Temporary Approval of  
Discount Contracts for Border Hospitals

Dear Secretary Hechler:

Enclosed please find a copy of the Health Care Cost Review Authority's proposed legislative rule for Temporary Approval of Discount Contracts for Border Hospitals. I hereby approve this rule for filing.

Sincerely,

  
W. Donald Weston, M.D.  
Acting Secretary

WDW/CMJJR/jmh

Enclosure

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Temporary Approval of Discount Contracts for Border Hospitals

Type of Rule:  Legislative  Interpretive  Procedural

Agency Health Care Cost Review Authority Address 100 Dee Drive, Suite 201  
Charleston, WV 25311-1692

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 a process to obtain temporary approval of discount contracts for certain border hospitals in order to prevent border hospitals from being at a competitive disadvantage vis-a-vis out-of-state hospitals.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A. The agency is funded by special reserves.

B. Economic Impact on Political Subdivisions; Specific Industries;  
Specific groups of citizens.

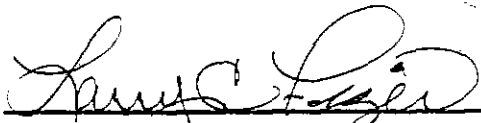
See response to C below.

C. Economic Impact on Citizens/Public at Large.

The temporary approval of discount contracts for border hospitals will enable border hospitals to remain competitive with out-of-state hospitals which do not have to obtain approval of discount contracts such that border hospitals obtaining such temporary approval will be able to compete for local patients who might otherwise seek services at an out-of-state hospital, and accordingly assist in minimizing rate increases necessitated by such a declining nongovernmental patient base caused by in-state patients going to out-of-state hospitals.

Date July 15, 1992

Signature of Agency Head or Authorized Representative

  
LARRY C. FIZER, Chairman

## SUMMARY OF PROPOSED RULE

House Bill 2194, effective March 20, 1991, directed the Health Care Cost Review Authority ("HCCRA") to examine the problems associated with discount contracts, cost-shifting, and hospitals located near the borders of this state, which report was filed with the legislature and governor on May 4, 1992. The aforesaid legislative study concluded that certain border areas have significant patient volume at risk if they cannot remain competitive with out-of-state hospitals. House Bill 2194 also requires hospitals to obtain approval of certain discount contracts from the HCCRA prior to such discount contracts becoming effective, which discount contracts are to be considered concurrently with the rate application. This rule is intended to allow certain border hospitals to obtain temporary approval of discount contracts in order to prevent border hospitals from being at a competitive disadvantage from out-of-state hospitals which are not regulated regarding discount contracts, while also requiring a retroactive review of such discount contracts under the criteria set forth in W. Va. Code §16-29B-20. This rule is intended to allow border hospitals seeking temporary approval of proposed discount contracts must file certain information with the Authority as set forth hereinafter in order to qualify for temporary approval. This rule has provisions for temporary approval of discount contracts, verified notice of the requirements for temporary approval, retroactive review, and protective orders under certain circumstances.

FILED

1992 JUL 15 PM 2 36

TITLE 65

WEST VIRGINIA LEGISLATIVE RULE  
HEALTH CARE COST REVIEW AUTHORITY

SERIES 22

Title: TEMPORARY APPROVAL OF DISCOUNT CONTRACTS  
FOR BORDER HOSPITALS

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§65-22-1      General

1.1.      Scope - This rule establishes a process for obtaining temporary approval, subject to retroactive review, of discount contracts for border hospitals under certain limited circumstances.

1.2.      Authority - W. Va. Code §§16-29B-8(a)(1), 19a and 20.

1.3.      Filing Date - July 15, 1992.

1.4.      Effective Date - \_\_\_\_\_.

This rule addresses a problem identified in the report prepared by the Health Care Cost Review Authority pursuant to the provisions of W. Va. Code §16-29B-19a relating to border hospital and discount contracts. This rule is intended to allow border hospitals seeking approval of proposed discount contracts pursuant to W. Va. Code §16-29B-20 to obtain temporary approval subject to retroactive review by the Authority, upon the filing of certain information with the Authority as set forth hereinafter and under certain limited circumstances as set forth hereinafter. The report prepared by the Health Care Cost Review Authority pursuant to W. Va. Code §16-29B-19a indicated that certain border hospitals may face a loss of patients to nearby out-of-state hospitals which are not regulated regarding such discount contracts, such that out-of-state hospitals may immediately implement such discount contracts. Out-of-state hospitals may obtain a competitive advantage over border hospitals by having access to the information submitted related to discount contracts for border hospitals in certain circumstances in which the border hospital could not obtain similar information for out-of-state hospitals which are not regulated regarding discount contracts. This rule is intended to prevent border hospitals in a limited geographic area from being at a competitive disadvantage to out-of-state hospitals due to the necessity of obtaining approval from the Authority of discount contracts with the rate application under W. Va. Code §16-29B-20.

This rule is intended to allow border hospitals to temporarily obtain approval of discount contracts, subject to retroactive approval by the Authority in accordance with W.Va. Code §16-29B-20.

§65-22-3      Definitions

As used in this rule, all terms shall have the same meaning as provided in section two of the Act. Terms not defined in the Act shall have the following meanings except where the context may expressly require otherwise.

3.1.            "Authority" means the West Virginia Health Care Cost Review Authority, an autonomous division of the West Virginia Department of Health and Human Services.

3.2.            "Act" means the West Virginia Health Care Cost Review Authority Act, W. Va. Code §16-29B-1 et seq.

3.3.            "Interested party" means any individual, group or organization which files a written request with the Authority on or before the prehearing conference stating that the individual, group or organization is aggrieved or is likely to be aggrieved based upon information and belief by any act or failure to act by the Authority or by any rule, regulation or final order of the Authority and setting forth with particularity the basis for such request.

3.4. "Affected party" means any interested party which is recognized by the Authority as an affected party.

3.5. "Code" means the Code of West Virginia of 1931, as amended.

3.6. "Border hospital" means a hospital located in the State of West Virginia which is located within ten (10) miles of an out-of-state hospital having a similar number of beds and a similar array of services as the West Virginia hospital.

3.7. "Discount contract" means any contract for the payment of patient care services between a purchaser or third party payor and a hospital which contract establishes discounts to the purchaser or third party payor and which contract is subject to the approval of the Authority pursuant to W. Va. Code §16-29-20. Examples of discount contracts shall include, but not be limited to, written contracts between a hospital and a third party payor or purchaser establishing a discount to the payor or purchaser in the form of a percentage reduction in the amount of charges or other adjustments that have the effect of decreasing the amount of charges and informal arrangements between hospitals and purchasers or third party payors which have the effect of decreasing the amount of charges for a group of patients.

3.8. "Verified notice" means a notice which contains all of the facts and information required by this rule and which has attached to it a statement made under oath before a notary public or other official entitled to administer oaths in West Virginia by the chief executive officer of the border hospital that the facts and circumstances set forth in the notice are true, accurate and complete to the best knowledge of the chief executive officer.

§65-22-4 Temporary Approval

4.1. A border hospital may obtain temporary approval of a proposed discount contract subject to retroactive review by the Authority, if each of the following conditions is met.

4.1.1. The border hospital is located within ten (10) miles of an out-of-state hospital which has a similar number of beds and a similar array of services as the border hospital; and

4.1.2. The border hospital files a verified notice with the Authority, which verified notice meets the requirements described in section 5 of this rule.

5.1. In order for a border hospital to obtain temporary approval of a discount contract in the manner set forth in section four of this rule, subject to retroactive review by the Authority, the border hospital shall file a verified notice with the Authority, which verified notice shall be filed at least five (5) days in advance of the date upon which the proposed discount contract is to be deemed temporarily approved and shall:

5.1.1. Identify the border hospital.

5.1.2. State affirmatively that the border hospital is located within ten (10) miles of the border of the State of West Virginia.

5.1.3. State affirmatively that the border hospital is located within ten (10) miles of an out-of-state hospital which has a similar number of beds and array of services as the border hospital.

5.1.4. State affirmatively that the border hospital would be at risk to lose a significant portion of patients to out-of-state hospitals if the discount contract is not temporarily approved and if the discount contract is not confidentially

maintained by the Authority upon the filing thereof and continuing thereafter until the retroactive review thereof.

5.1.5. Identify the out-of-state hospital or hospitals.

5.1.6. State the number of licensed beds of the border hospital.

5.1.7. State the number of licensed or registered beds of the out-of-state hospital or hospitals as identified by the appropriate state department of health.

5.1.8. List the array of services offered by the border hospital.

5.1.9. List the array of services offered by the out-of-state hospital or hospitals according to the American Hospital Association's most recent hospital guide.

5.1.10. Identify the entity with whom the border hospital has contracted.

5.1.11. State the total gross and net patient revenue of the border hospital each year for the past three years.

5.1.12. Project the gross and net patient revenue which the border hospital shall generate each year during the term of the discount contract.

5.1.13. State affirmatively that such discount shall not decrease the charges for such services below the actual cost to the hospital.

5.1.14. State affirmatively that the cost of such discount shall not be shifted to any other purchaser or third-party payor.

5.1.15. State affirmatively that such discount shall not result in a decrease in the border hospital's proportion of medicare, medicaid, or uncompensated care patients.

5.1.16. State affirmatively that such discount is based on criteria which constitute a quantifiable economic benefit of the border hospital.

5.1.17. Include a copy of the discount contract, which contract shall be confidential for the purpose only of obtaining temporary approval thereof in accordance with subsection 6.3 of this rule.

5.1.18. Present such other and further information or documents as may be requested by the Authority.

§65-22-6            Effective Date of Temporary Approval; Retroactive Review

6.1.            Upon obtaining temporary approval of any proposed discount contract, said contract shall be further subject to retroactive review by the Authority in accordance with the criteria set forth in W. Va. Code §16-29B-20 and the rate review procedures set forth in W. Va. Code §16-29B-21.

6.2.            The effective date of any temporary approval shall be the date which is five (5) days from the date of filing of a verified notice meeting the requirements of section five of this rule or the date the Authority determines said verified notice to be complete, whichever first occurs.

6.3            Upon receipt of a verified notice meeting the requirements of section five of this rule, the Authority shall maintain the information contained in and related to such proposed discount contract in a confidential manner to be used only by the Authority, its staff and its agents and independent contractors for regulatory purposes, which confidentiality shall be maintained only until the commencement of retroactive review of such discount contract in accordance with subsection 6.5 of this rule, which

review for all pertinent purposes shall commence upon the filing by the border hospital of its next succeeding rate application except upon the issuance by the Authority of a protective order in accordance with section seven of this rule.

6.4. Following receipt of a verified notice complying with the requirements of section five of this rule, the Authority shall for the purpose of retroactive review hereunder determine within fifteen (15) days thereafter whether or not the verified notice is complete. If the verified notice is not deemed complete, the Authority may request additional information from the border hospital. Upon receipt of the additional information from the border hospital, the Authority again shall have fifteen (15) days within which to determine whether or not the verified notice is complete.

6.5. Upon determining that the verified notice is complete in accordance with the requirements of section five of this rule, the Authority shall publish a notice of such determination of completeness and/or temporary approval of such discount contract, as may be appropriate, in the Saturday Charleston newspapers and the State Register and shall retroactively review the proposed discount contract with the hospital's next succeeding rate application in order to determine whether the discount contract meets all of the requirements for

final approval set forth in section twenty, article twenty-nine-B, chapter sixteen of the Code.

6.6. In the event that the Authority subsequently determines that the discount contract does not meet all of the requirements for temporary approval set forth in section four of this rule, the Authority may issue an order temporarily denying and revoking the temporary approval of the discount contract at any time after such temporary approval, which order shall be effective as established by the Authority in said order, which effective date shall not be less than ten (10) days from the date of said order and which effective date may exceed ten (10) days from the date of said order in the discretion of the Authority upon good cause shown for such extension.

6.7. In the event that the Authority determines during retroactive review in accordance with this section that the discount contract meets the standards for final approval of discount contracts set forth in W. Va. Code §16-29B-20, the Authority shall issue a final order approving the discount contract in accordance with the procedures for rate review set forth in W. Va. Code §16-29B-21, which final order shall be deemed effective as of the date of publication of the notice of determination of completeness.

6.8. In the event that the Authority determines that the discount contract does not meet the standards for final approval of discount contracts set forth in W. Va. Code §16-29B-20, the Authority shall issue a final order denying approval of the discount contract and rescinding the previous temporary approval in accordance with the procedures for rate review set forth in W. Va. Code §16-29B-21, which final order shall be effective as of the date established by the Authority in said order. The effective date of a final order denying approval of a discount contract which was previously temporarily approved shall not be less than ten (10) days from the date of said order, but may be extended by the Authority for a period not in excess of thirty (30) days from the date of said order upon good cause shown by the border hospital for such extension.

§65-22-7 Protective Orders

7.1. Upon the filing of a rate application by a hospital which includes information regarding discount contracts which have been previously temporarily approved by the Authority under the provisions of this rule, the information related to such discount contracts shall become subject to public disclosure as a public record unless and until such time as the hospital obtains a protective order for good cause shown in accordance with this section.

7.2. In order to obtain a protective order under this section, a hospital must file a written request verified under oath establishing that the hospital cannot remain competitive with nearby out-of-state hospitals without maintaining the confidentiality of such discount contracts, that the hospital is at risk of losing a significant volume of patients if such discount contract is disclosed, and otherwise that good cause exists for the entry of a protective order in accordance with this section. The Authority may issue a protective order if it determines that the foregoing requirements have been met by the hospital.

7.3. Upon the entry of a protective order, discount contracts will be made available by the Authority only to affected parties in any administrative proceeding arising out of this rule or out of the regular rate review procedure as set forth in W.Va. Code §16-29B-20 and 21, upon a showing of good cause by the affected parties, taking into consideration the competitive disadvantage to border hospitals this rule is intended to avoid and only after ten (10) days advance written notice to all parties signatory to the discount contract. Upon the entry of a protective order, no information from the discount contracts shall be used or disclosed by any affected party who is provided such information for any purpose other than the purpose of preparing for the administrative proceeding pursuant to this rule or the regular rate review procedures set forth in W.Va. Code §16-29B-20 and 21.

7.4. Each affected party who seeks to obtain a copy of the discount contract subject to a protective order shall first execute in writing the following certification and file it with the Authority:

"I certify my understanding that the discount contract made available and/or provided to me is subject to the terms and provisions relating to discount contracts in the protective order issued by the Authority, and that I am bound by those terms. I recognize that I may not disclose the contents of such discount contracts except under the conditions set forth in the protective order and I certify that any such disclosure will be so limited. I recognize that duplication of any portion of the discount contract or other disclosure not permitted under the protective order constitutes a violation of the protective order. I shall take precautions reasonably calculated to keep the protected materials secure and confidential."

The original of each certificate shall be maintained by the Authority and a copy of each written certificate shall be provided to the border hospital and any other signatory to the discount contract. Any person who has executed the certification shall continue to be bound by the provisions of the protective order, even if the person ceases to be engaged in the proceeding.

7.5. Affected parties who may be entitled to access to the discount contracts under the protective order shall not make photocopies, shall not disclose the information regarding contracts for any other purpose other than the purpose of preparing for the administrative proceeding pursuant to this rule or the regular rate review procedures set forth in W.Va. Code §16-29B-20 and 21, and shall take precautions reasonably calculated to keep the protected materials secure and confidential in accordance with the purposes and intent of this rule.

§65-22-8

Final Order; Requests for Hearings

8.1. An order by the Authority temporarily approving or temporarily denying a proposed discount contract in accordance with this rule shall not be considered a final decision under W. Va. Code §16-29B-13, and only an order denying or approving such proposed discount contract in the regular rate review procedure as set forth in W. Va. Code §16-29B-20 and 21 shall be considered a final decision under W. Va. Code §16-29B-13.

8.2. Any affected person may request the Authority to conduct an administrative hearing in connection with the final approval or final denial of a proposed discount contract as set forth in subsection 7.1 of this rule by filing a written request for an administrative hearing with the Authority within ten (10) days after the date of such final order.

8.3. The administrative hearing shall be conducted within thirty (30) days of the filing of the request for an administrative hearing unless upon a showing of good cause or by mutual agreement of all parties to the proceeding the Authority establishes a later date.

8.4. At the conclusion of the administrative hearing, the parties shall submit proposed findings of fact and conclusions of law or legal briefs if required by the Authority.

8.5. The Authority may conduct a prehearing conference in accordance with Rule 16 of the West Virginia Rules of Civil Procedure. If an order is first obtained from the Authority, the parties may engage in discovery as provided by the West Virginia Rules of Civil Procedure.

§65-22-9 Appeal

Only final orders issued by the Authority as defined in subsection 7.1 of this rule approving or denying the proposed discount contract under the criteria set forth in W. Va. Code §16-29B-20, pursuant to the retroactive review described in section six of this rule shall be considered a final decision of the Authority for the purpose of appeals of said final decisions under W. Va. Code §16-29B-13; otherwise, a temporary order approving or denying

the proposed discount contract hereunder shall not be considered a final decision for the purpose of appeals thereunder.

§65-22-10      Severability

If any section or provision of this rule is declared unconstitutional or void by any court of competent jurisdiction, or the applicability of this rule is held invalid as it relates to a particular person or persons or a particular circumstance, the constitutionality or validity of the remainder of this rule shall not be affected thereby and, to this end, the sections and provisions of this rule are declared to be severable.