

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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1992 SEP -9 - 10 10
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**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 65

CITE AUTHORITY W. Va. Code §§16-29B-8(a)(1), 19a, 20

AMENDMENT TO AN EXISTING RULE: YES NO

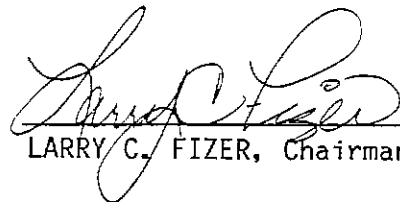
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

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

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

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


LARRY C. FIZER, Chairman

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SEP 30 1992

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,

A handwritten signature in cursive script, appearing to read "W. Donald Weston".

W. Donald Weston, M.D.
Acting Secretary

WDW/CMJJR/jmh

Enclosure

APPENDIX B

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FISCAL NOTE FOR PROPOSED RULES

DEC 02 1985

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.

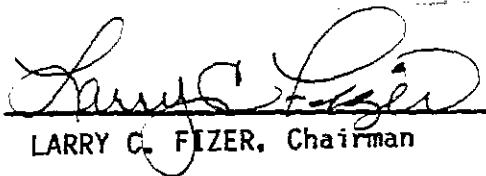
See response to C below.

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

RECEIVED

DATE: September 9, 1992

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: HEALTH CARE COST REVIEW AUTHORITY

LEGISLATIVE RULE TITLE: Temporary Approval of Discount Contracts For Border Hospitals

1. Authorizing statute(s) citation W. Va. Code §§16-29B-8(a)(1), 19a, 20

2. a. Date filed in State Register with Notice of Hearing: July 17, 1992

b. What other notice, including advertising, did you give of the hearing?
Charleston Gazette and Daily Mail (7/20/92)
The Health Care Cost Review Newsletter (7/24, 7/31, 8/7, 8/14/92)

c. Date of hearing (s): August 17, 1992

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received _____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)
September 9, 1992

f. Name and phone number of agency person to contact for additional information:
Charles M. Johnson, Jr.
Assistant General Counsel
558-7000

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

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DEPT. OF SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES

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.

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 65

WEST VIRGINIA LEGISLATIVE RULE
HEALTH CARE COST REVIEW AUTHORITY

SERIES 22

Title: TEMPORARY APPROVAL OF DISCOUNT CONTRACTS
FOR BORDER HOSPITALS

§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.



Gaston Caperton
Governor

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
HEALTH CARE COST REVIEW AUTHORITY

Larry C. Fizer
Chairman

Board Members
Walter J. Dale
Robert F. Hatfield

M E M O R A N D U M

TO: Legislative Rule-Making Review Committee
FROM: Health Care Cost Review Authority
DATE: August 31, 1991
RE: Comments Regarding Proposed Legislative Rule:
Temporary Approval of Discount Contracts for Border
Hospitals; Summary of Changes

=====
The agency received written comments concerning this proposed legislative rule from Wheeling Hospital, Weirton Medical Center, Mountain State Blue Cross and Blue Shield, Inc., American Hospital for Rehabilitation, and The Health Plan of the Upper Ohio Valley, Inc. A public hearing was conducted on August 17, 1992 at 9:30 a.m., at which time oral comments were taken from Mountain State Blue Cross and Blue Shield, Inc., and The Health Plan of the Upper Ohio Valley.

Wheeling Hospital's comments suggested that: 1) proposed discount contracts should not be released since it places the border hospital at risk and at a competitive disadvantage, and 2) a permanent approval process for discount contracts needs to be reviewed in addition to the temporary approval process set forth in these rules. First, in response to the comments of Wheeling Hospital regarding confidentiality, the HCCRA notes that under the proposed rules discount contracts meeting the requirements of section 5 will be maintained in confidentiality under the provisions of subsection 6.3 during the period of temporary review until the commencement of the retroactive review of the contract with the border hospital's next rate application under subsection 6.5. Upon the filing of a rate application by such border hospital, a discount contract which was temporarily approved would be subject to retroactive review as to whether the contract meets the requirements of W. Va. Code §16-29B-20. The hospital may maintain confidentiality of the discount contract during retroactive review upon good cause being shown under section 7 of the proposed rule. Therefore, the agency has determined that no further provisions are necessary in order to address the concerns of Wheeling Hospital regarding confidentiality.

100 Dee Drive, Suite 201

Charleston, West Virginia 25311-1692

Telephone: (304) 558-7000

FAX: (304) 558-7001

Second, regarding Wheeling Hospital's comments concerning permanent approval of these contracts, as mentioned above, section 7 provides that contracts temporarily approved under the proposed rules will be subject to retroactive or permanent review during the normal rate review process, and accordingly the HCCRA determines that no changes are necessary in this regard.

Weirton Medical Center filed a written comment in support of adoption of the proposed rules in order to allow border hospitals to obtain temporary approval of discount contracts which would enable the hospital to remain competitive with out-of-state providers not subject to the West Virginia Financial Disclosure Act. Accordingly, the HCCRA determined that no further changes were necessary in order to address the concerns of Weirton Medical Center.

Mountain State Blue Cross and Blue Shield, Inc. commented that the definition of "border hospital" is too restrictive. The requirement that a border hospital must be located within ten (10) miles of a competing out-of-state hospital would eliminate a number of hospitals from qualifying for temporary approval of discount contracts under these proposed rules. Mountain State Blue Cross and Blue Shield, Inc. proposed that the definition of "border hospital" be expanded to twenty (20) miles or be amended to incorporate standard metropolitan statistical areas. The proposed rule is intended to address a problem identified in a recent legislative study which concluded that certain border areas have significant patient volumes at risk if they are unable to remain competitive without out-of-state hospitals. Therefore, the definition of "border hospital" is intended to focus upon the specific problem areas identified in the legislative study which have significant patient volumes at risk, and the HCCRA has determined that no further changes to this definition are necessary in order to address this problem.

Second, Mountain State Blue Cross and Blue Shield, Inc. suggested that border hospitals be permitted to use the total amount of lost revenue to demonstrate that they are at risk instead of the patient volume at risk. The HCCRA determines that the volume of patients at risk is a more reliable indicator of the problems faced by border hospitals in competing with out-of-state hospitals, and projections regarding the total amount of lost revenue may be subject to manipulation. Therefore, the HCCRA has determined that no further changes are necessary in order to address this concern.

Third, Mountain State suggested that the definition of "affected party" be clarified in order to provide that third party payors regularly reimbursing border hospitals be deemed affected parties, but that another hospital should be an affected party only if it is located within the prescribed "impact area" for the border hospital. Under the definition of affected party in subsection

3.4, an affected party is any interested party which is deemed by the Authority as an affected party. Under subsection 3.3 an interested party means any individual, group or organization filing a written request with the Authority on or before the prehearing conference demonstrating that they are aggrieved or are likely to be aggrieved by an act, rule or final order of the Authority. Therefore, if third party payors can demonstrate that they are aggrieved or are likely to be aggrieved by any rule, regulation or final order of the Authority, the Authority can deem such parties to be affected parties under the proposed rules. However, a limitation upon the "affected party" definition which would eliminate the hospitals which are outside the "impact area" for the border hospital appears to be a thinly veiled attempt to cut off legitimate inquiry into discount arrangements. The HCCRA determines that the proposed definitions which require that the party demonstrate that they are aggrieved or likely to be aggrieved by any rule, regulation or final order of the Authority is broader, and may enable hospitals outside of the immediate service area to become affected parties if they can demonstrate they are aggrieved by such rule, regulation or final order. Accordingly, the HCCRA is determined that no further changes in this regard are necessary.

Fourth, Mountain State commented regarding the confidentiality provisions of section 7 of the proposed rules, and the HCCRA has determined that these provisions are adequate in order to protect the interest of border hospitals in maintaining confidentiality as discussed above.

Fifth, Mountain State further commented that border hospitals should only be required to state that the out-of-state hospital is licensed or accredited as an acute care hospital. Under subsections 5.1.6 through 5.1.9 the proposed rules require that the border hospitals state the number of licensed beds for the border hospital and the out-of-state hospital, and identify the array of services for the border hospital and the out-of-state hospital. This information is necessary in order to evaluate the extent of competition between the border hospital and the out-of-state hospital as justification for the expedited or temporary review of these discount contracts. Accordingly, the HCCRA determines that no further changes are appropriate in this regard.

Sixth, Mountain State commented that under subsection 6.6, the HCCRA should clarify the effect on rates if a contract is temporarily approved under the proposed rules and subsequently revoked. Subsection 6.6 provides that in the event a contract which is temporarily approved is subsequently revoked, the order temporarily denying revoking the temporary approval of the discount contract shall not be effective until ten (10) days from the date of said order or until a later date if extended by the Authority upon a showing of good cause. This provision will enable hospitals to implement a change in the rate structure with a minimum of hardship. Furthermore, under W. Va. Code §16-29B-21(d) and (e), in

the event a contract is temporarily approved but is revoked prior to retroactive review, and therefore prior to a final order of the Authority, the increased revenues from such temporary approval may be ordered by the HCCRA to be refunded to purchasers or third party payors or the HCCRA may further adjust the hospital's rates accordingly. Therefore, the HCCRA has determined that adequate provisions exist to deal with Mountain State's concerns in this regard.

Finally, Mountain State comments that subsection 7.1 should be amended to provide that parties seeking a protective order or a discounted contract during the retroactive review be allowed to withdraw the contract if such protective order is not secured. Under section 7, the parties seeking retroactive approval of the discount contract have already obtained the benefit of the temporary approval provisions, and withdrawal of the contract from consideration under the retroactive review provisions would subject the border hospital to revocation of such temporary approval under subsection 6.6, and W. Va. Code §16-29B-21(d) and (e) as discussed above. Therefore, the HCCRA has determined that no further changes are necessary in this regard.

American Hospital for Rehabilitation commented that the definition of border hospital should be expanded to include hospitals located within thirty (30) miles of out-of-state hospitals. This comment is addressed above in relation to the comment by Wheeling Hospital. American Hospital for Rehabilitation further suggested that the requirement that the out-of-state hospital must have a similar array of services as the border hospital be changed in order to accommodate the situation which the out-of-state hospital has a broader array of services than the in-state hospital. Under subsection 5.1.3, the out-of-state hospital must have a similar number of beds and an array of services as the border hospital, which beds and services are more particularly described under the requirements of subsection 5.1.6 through 5.1.9. In the event an out-of-state hospital has a broader array of services that also overlap the services at the border hospital, then it is likely that these facilities would be viewed as competitors and as offering "similar services." The HCCRA has the discretion to interpret whether services are similar on a case-by-case basis and has determined that this information is necessary in order to allow for such expedited or temporary approval of the discount contract in accordance with the above comments.

The Health Plan of the Upper Ohio Valley commented that the concerns identified in the legislative study regarding patient volumes at risk were a legitimate and serious problem. The Health Plan of the Upper Ohio Valley further commented that the definition of border hospital be changed to provide that the ten (10) mile limit be expanded. This comment has been exhaustively addressed above. The Health Plan of the Upper Ohio Valley further suggests that the requirement that the border state and out-of-state

hospital have a similar array of services be changed in order to address the situation in which specialty centers "steal away" profitable specialty services to the detriment of border hospitals. Under subsection 5.1.3, border hospitals must have a similar number of beds and array of services as the out-of-state hospital. In the case of out-of-state hospitals which compete with border hospitals only in regards to a limited amount of services, to the extent that the border hospital meets the other requirements of section 5 and also competes with the border hospital for same patients vis-a-vis the same service, the HCCRA, in its discretion, may determine that these services are "similar" within the meaning of subsection 5.1.3. On the other hand, in the event a border hospital obtains temporary approval of its discount contracts under the proposed rule, and the HCCRA subsequently discovers that the border hospital and the out-of-state hospital are not effectively competing for the same services and do not have a similar array of services under subsection 5.1.3, the HCCRA may proceed to revoke such temporary approval under subsection 6.6. Therefore, in accordance with the above, the HCCRA determines that no further changes are necessary in order to address the concerns of The Health Plan of the Upper Ohio Valley in this regard.

The Health Plan of the Upper Ohio Valley further commented regarding cost shifting. The HCCRA determines that these concerns are dealt with separately under the new cost-based rate methodology, and require no further consideration under the proposed rule. Finally, The Health Plan of the Upper Ohio Valley suggested that the provisions under section 7 regarding confidentiality be revised to provide for a more restrictive protective order. The HCCRA has determined that no further changes are necessary in this regard as described above.

Thus, after considering all the comments received regarding the proposed rule, the HCCRA has determined that no further changes are necessary or appropriate, and files the proposed rule with its approval without further changes.

CMJJr/jmh

WV HEALTH CARE COST REVIEW AUTHORITY
MEETING REGISTRATION

Date of Meeting: August 17, 1992, 9:30 a.m.

Public Hearing re: Proposed Rule, "Temporary Approval of Discount Contracts for Border Hospitals"

	Individual's Name	Name of Organization	Do you wish to speak? Y or N
1	CARL CALLISON	MOUNTAIN STATE BLUE CROSS	N
2	NICK CASEY	Lewis Friesberg GLASSER & CASEY	No
3	Chris Koch	Wheeling Hospital	No
4	Bill Gwin	MS BCBS	Yes
5	BOB KOTA	HEALTH PLAN	Yes
6	PATTI EAST	" "	No
7	JOHN FRANKOVITZ	WEIRTON MEDICAL	No
8	CYNTHIA NIXON	WEIRTON MEDICAL	NO
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MEDICAL PARK
WHEELING, WV 26003
304/243-3000
FAX 304-243-3060

August 14, 1992

1992 AUG 17 10 00 AM
HEALTH CARE CENTER

Mr. Larry Fizer, Chairman
Health Care Cost Review Authority
100 Dee Drive, Suite 201
Charleston, WV 25301

Dear Mr. Fizer:

I appreciate the opportunity to review the "Emergency Rule on Temporary Approval of Discount Contracts for Border Hospitals", and have several comments.

Section 7, addresses Protective Orders and situations when affected parties obtain discount contracts subject to certifying as to its confidentiality. Situations can occur where the affected party is a competitor either as a hospital or third-party payor. When this occurs, under no situation should a copy of the contract be released since it places the border hospital at risk and competitive disadvantages.

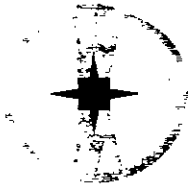
The rule also defines temporary approval, subject to retroactive review during the hospitals next succeeding rate application filing. With the possibility of denial, third party payors may eliminate contracts with West Virginia hospitals. These third parties set premium rates, etc., based on these contracts and will look at reducing risk. Therefore, some permanent approval process needs reviewed.

Again, thank you for the opportunity to review the emergency rule and offer comments.

Sincerely,

John J. Yeager
Associate Administrator

JJY/ct



WEIRTON MEDICAL CENTER

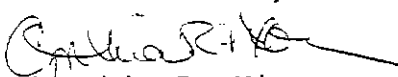
August 14, 1992

Larry C. Fizer, Chairman
Health Care Cost Review Authority
100 Dee Drive, Suite 201
Charleston, WV 25311

Dear Mr. Fizer:

Enclosed please find written comments relating to the proposed rule entitled "Temporary Approval of Discount Contracts for Border Hospitals."

Sincerely,


Cynthia R. Nixon
Vice President

CRN/dfk

ak
WJD

Proposed Rule
TEMPORARY APPROVAL OF DISCOUNT CONTRACTS
FOR BORDER HOSPITALS

August 17, 1992

When the Legislature passed House Bill 2194 it recognized that some West Virginia hospitals face unregulated competition from out-of-state providers and directed the Health Care Cost Review Authority to examine the potential problems that could occur for "border hospitals." This study was completed and submitted to the Governor and Legislature in May of this year.

Among the conclusions was the recommendation that regulatory action would be necessary to ensure that West Virginia's "border hospitals" would retain the capability to compete. The Health Care Cost Review Authority has worked with the affected hospitals and introduced the Proposed Rule - Temporary Approval of Discount Contracts for Border Hospitals.

Weirton Medical Center fully supports their adoption. The rules maintain the integrity of H.B. 2194 but allow "border hospitals" like the Weirton Medical Center to obtain temporary approval of certain discount contracts which will allow us to remain competitive with out-of-state providers that are not regulated or subject to the West Virginia Financial Disclosure Act.

STATEMENT BY BILL GAVIN
MOUNTAIN STATE BLUE CROSS & BLUE SHIELD

The regulations being developed appear to be an effort to allow marketplace forces to coexist with HCCRA's regulatory responsibilities. HCCRA's recognition that market forces do impact on West Virginia's health care system is commendable.

The impact is perhaps greater for our border hospitals, since they must not only compete with in-state facilities, but also with those in neighboring states. It is significant that most of the states bordering West Virginia are free enterprise states.

Mountain State Blue Cross & Blue Shield is concerned that the benefits of the proposed regulations are largely negated by the very stringent restrictions in the current document.

While we have several comments, which I am submitting today, two are particularly important.

First, defining a border hospital as one located within 10 miles of a competing out-of-state hospital is too restrictive. It takes only 10 to 20 minutes to drive ten miles. With that criterion, very few of our border hospitals would qualify under these regulations.

We propose that the criteria for border hospitals give much more account to the flow of commerce. In particular, we would look to the standard metropolitan statistical areas defined by the U.S. government. In the case of non-metropolitan areas, the criterion should be the study area used by HCCRA in evaluating CON applications. In any event, a minimum of 20 miles would be appropriate. Since a hospital's competitive position is service specific, the requirement that the out-of-state hospital have similar beds and services should be deleted.

Second, instead of the proportion of patients, we propose that border hospitals be permitted to use the total amount of lost revenue to demonstrate that they are at significant risk. In today's highly inflated health care economy, even a small number of patients can represent a material amount of lost revenue.

Our other recommendations for modifications to the current document also aim to eliminate unnecessary restrictions and thereby maximize the intent of these regulations - which we believe is to give our border hospitals the opportunity to compete successfully with their out-of-state competitors.

MOUNTAIN STATE BLUE CROSS & BLUE SHIELD, INC.
COMMENTS ON
PROPOSED REGULATIONS FOR:
TEMPORARY APPROVAL OF DISCOUNT CONTRACTS
FOR BORDER HOSPITALS

August 17, 1992

"A hospital which is located in the state of West Virginia and which has an out-of-state acute care hospital located:

- 1 > Within 20 miles; or
- 2 > Within the same standard metropolitan statistical area (SMSA); or
- 3 > Within the study arch which would be utilized in evaluating a CON application for a bed replacement by the West Virginia hospital.

Section 5.1.4. The border hospital should be required to state affirmatively that they would be at risk to lose a significant amount of payment to out-of-state hospitals. In today's highly inflated health care economy, even a small portion of patients can represent a material amount of lost revenue.

The requirement to affirmatively state the confidentiality of the contract is seeking to maintain the confidentiality of the contract.

Section 5.1.6 - 5.1.9 We would recommend that the border hospital only be required to state that the out-of-state hospital is licensed/accredited as an Acute Care hospital.

Section 6.6 We suggest a clarification of the result where the Authority rescinds or revokes a temporary rate, specifically respecting payments made thereunder.

Section 7.1 We would recommend that the provision be changed to state that the hospital or other affected party who is a party to the contract may obtain a protective order or may withdraw the contract if not secured.

Section 7.2 We would suggest that in addition to the hospital, the other party to the contract be recognized as having an interest in a protective order. We would also suggest that a significant amount of payment be the standard.

Section 7.4/7.5 We would suggest that disclosure be on a "need to know" basis (to prepare for hearing). HCCRA should require the affected party to identify each employee, attorney or agent with access to execute a statement individually and to require the return of the document. The "use of or disclosure should be subject to "all necessary" precautions to maintain confidentiality of protected contracts.

MOUNTAIN STATE BLUE CROSS & BLUE SHIELD, INC
COMMENTS ON
PROPOSED REGULATIONS FOR:
TEMPORARY APPROVAL OF DISCOUNT CONTRACTS
FOR BORDER HOSPITALS

General:

The regulations appear to be an effort to allow market place forces to coexist with HCCRA's regulatory responsibilities. HCCRA's willingness to recognize that market place forces do impact upon West Virginia's health care system is to be commended. However, to truly be of benefit to many West Virginia Hospitals, businesses, consumers and payors some of the very stringent restrictions included in the proposed regulations should be modified.

Section 3.4

Definition of "Affected Party" We recommend that guidelines be included to indicate when an interested party is an affected party. Specifically we would suggest that any third party payor regularly reimbursing the border hospital be deemed an affected party. We would also suggest that another hospital should be an affected party only if it is located within the prescribed impact area for the border hospital.

Section 3.7

Definition of "Border Hospital" requiring only 10 mile separation from an out-of-state hospital with a similar number of beds and a similar array of services is extremely restrictive. Today hospital's "compete" with a wide array of ancillary providers, such as Ambulatory Surgery Centers, diagnostic centers and free standing MRI units. Competition for patients among hospitals is on a service specific basis and is often at long range. At today's health care prices even a few MRI's or Cardiac Cath procedures amount to significant money. Section 16-29B-19A directed a special assessment of the problems associated with hospitals located within 20 miles of the West Virginia border. The border hospital definition should recognize that West Virginia's hospitals and payors are subject to the normal flow of commerce across interstate borders. We would recommend that a border hospital be defined as:

American Hospital for Rehabilitation
6900 West Country Club Drive
Huntington, West Virginia 25705
(304) 733-1060
Fax No. (304) 733-4208



HEALTH CARE COST REVIEW AUTHORITY
1992 JUL 30 10:00 AM
RECEIVED

July 28, 1992

Mr. Charles M. Johnson, Jr.
Health Care Cost Review Authority
100 Dee Drive, Suite 201
Charleston, WV 25311-1692

Dear Mr. Johnson:

I am writing to provide comment on the proposed rule titled, "Temporary Approval of Discount Contract for Border Hospitals".

I commend the HCCRA for having the foresight to provide expedited, temporary approval of discount contract to border hospitals. Hospitals such as American Hospital for Rehabilitation would be put in a competitive disadvantage without an exception process.

However, I believe the definition of border hospital has been drawn too tightly. A broader definition is necessary in order to address all hospitals that will be adversely effected by the discount contract review process.

I propose the definition of border hospital in paragraph 3.6 of the proposed rule be changed to the following:

Border hospital means a hospital located in the state of West Virginia which is located within 30 (thirty) miles of an out of state hospital having similar services.

Language in paragraphs 4.1.1. and 5.1.3. would have to be revised as well to comply with the language I propose.

My reasoning for proposing a broader definition of border hospitals is as follows:

1. Recognition that the primary service area of most hospitals extends beyond a 10 miles radius of their location, and that 30 miles would be a much more realistic figure.
2. Rehabilitation hospitals in particular, due to the regional referral nature of our business, normally have broader market areas than acute care facilities. The state health plan recognizes the regional nature of rehabilitation services, and the definition of border hospital should as well.


Mr. Charles M. Johnson, Jr.
July 28, 1992
Page 2

3. Paragraph 3.6 of the proposed rule states that"an out of state hospital which has a similar number of beds and a similar array of services as the border hospitals;...."

American Hospital for Rehabilitation (AHR) competes for rehabilitation patients with King's Daughters' Medical Center (KDMC) in Ashland, Kentucky. KDMC is a 340 bed acute care facility with a 27 bed distinct part rehabilitation unit. KDMC is much larger in bed size and has a broader array of services than does AHR, but we do compete with them for rehabilitation patients. Thus, my proposed language would only require that out of state hospitals have "similar services".

I appreciate the opportunity to respond to HCCRA's proposed rule, and anticipate that the rule can be revised to better reflect the competitive forces that effect hospitals like American Hospital for Rehabilitation.

Sincerely,



Kevin Malcomb
Chief Executive Officer

THE HEALTH PLAN OF THE UPPER OHIO VALLEY, INC.

COMMENTS

ON

HCCRA'S EMERGENCY BORDER REGULATIONS

AUGUST 17, 1992

It is obvious that these proposed regulations concerning border hospitals have emanated from W. Va. Code §16-29B-19a in which the Legislature required HCCRA to do a report to include "a separate examination of those problems associated with hospitals located within twenty miles of the borders of this state and separate recommendations on resolving those problems." This is in concert with the direction by the Legislature to "examine the problems associated with health care costs in the state, including those associated with discount contracts and the shifting of costs." We're here to hopefully give HCCRA some important input concerning these regulations, and our hope is that they are developed to best serve the W. Va. health care consumer.

First, let me tell you a little about our company and what we do. My name is Bob Kota, and I work for The Health Plan of the Upper Ohio Valley, Inc. We are a non-profit, W. Va. chartered corporation, headquartered in St. Clairsville, Ohio, across the river from Wheeling, W. Va., and we are a federally qualified health maintenance organization (an HMO). We currently have approximately 77,000 members enrolled and receiving health care through our organization. About half are Ohio residents and the other half W. Va. residents. We provide health care coverage for individuals and groups or employers, both large and small. We have a Medicare cost contract available for Medicare eligible retirees, and we also cover some federal, state and local governmental employees.

As an HMO, we are mandated by state law to provide "comprehensive" medical coverage, including preventative care, for

our members which translates into no deductible, no co-pay comprehensive health care coverage, and we do it well. We must compete with health care "insurers" such as indemnity insurance companies which can alter their coverage by using "reductions" from 1st dollar coverage in the form of deductibles, co-pays, exclusion of pre-existing conditions, and limiting the dollar amount to be spent on a specific person (i.e., caps). Our "administrative costs" at The Health Plan are about 6%, which means that for every dollar of "premium" we take in, 94¢ is paid back for health care. This is tremendously efficient for our HMO industry and unbelievably low for the indemnity insurance industry. We, as an HMO, represent managed care, which means we provide proper health care for our members by reducing the number of unnecessary expensive medical tests and procedures, that for proper treatment may not be necessary. We do this with "utilization review" procedures. The doctors and hospitals in our contract network work with us to provide proper care with little waste. Even though our medical coverage is comprehensive medical coverage, we have kept our premiums affordable, even when compared with insurers which have substantial deductibles and co-pays, which, of course, come out of the individuals' pockets. These reasonable premium levels have afforded groups (i.e., employers) who utilize us for their health care needs to provide comprehensive coverage for their employees and at the same time help them stay competitive in their industry and viable to continue to provide jobs.

One of the most important ways we have been able to provide our full coverage at acceptable "premiums" has been our provider contracts. Most of the hospitals in our "contract network" have been with us for years, and we believe we have built a rapport and a positive working relationship with them. A statement found in HCCRA's border hospital study reflects this in that hospital administrators in our area stated that HMO and PPO (Preferred Provider Organization) business represented "desirable business opportunities," and in this area of W. Va. a significant number of patients are already being served by HMO's and PPO's. What do our contract hospital providers get in return for the discount contracts? Large volumes of patients and prompt payment; in most instances our hospitals are paid within 30 to 45 days of receipt of their bills. These two assets coming from our contracts are exactly what the border hospital study on page #81 said is needed to substantiate discount contracts. In our case, a lot of the patient volume is coming from out-of-state (across the border) into W. Va. This is reflected in a statement in the study at page #74:

"The following areas enjoy the benefit of additional patient utilization as follows: approximately 30% of all patients admitted to Ohio County hospitals are from out of state" (emphasis added).

And on page #77:

"Also notable is the response to the Ohio County survey which indicated that a significant percentage of those surveyed stated that their '... health insurer required

me to use this hospital.' This is, in fact, very beneficial if it is a W. Va. hospital that the patient is required to use. It would appear in Ohio County that specific contracts may be in place with W. Va. hospitals which cause patients to be referred or even 'required' to use a specific hospital in West Virginia."

WE CAN TELL YOU THIS IS TRUE! Because of this, W. Va. border hospitals need to be able to continue to freely contract with us and other third party payers so these out-of-state patients will continue to inflow into W. Va. hospitals, and the W. Va. patients stay here. Out-of-state hospitals can freely contract and, if unnecessary impediments on discount contracts are placed on W. Va. border hospitals, the patient flow could go out of W. Va.. The study touches on this on page #77 by stating,

".... it is obvious that West Virginia border hospitals have the potential to either benefit significantly from patient flow into W. Va. or be at a great disadvantage if patient flow is out-of-state."

Also stated in the border hospital study at page #82 is found:

"Patient flow studies and other analysis have confirmed that certain areas of the state have significant patient volume 'at risk' if they cannot remain competitive with out-of-state hospitals."

Again, there are no impediments for out-of-state hospitals to freely contract with us and other third party payers, and if they want more of the business in the future, they may decide to negotiate other certain discounts to get it. (The out-of-state hospitals would love to have this business.) This is not what we want to happen, and we believe neither HCCRA nor the legislature wants this either.

We must bring to your attention that regarding the definition of "border hospital" in the proposed regulations, the mileage and the definition limitation to that of a hospital of a similar size and array of services will not protect a W. Va. hospital. Ten miles is too short of a distance, and even much smaller out-of-state hospitals (or even "specialty centers") can steal away very profitable business by offering services (say, lab work or mammograms, etc.) at a lower cost if the W. Va. hospitals can't freely contract with a third party payer as the out-of-state hospital or specialty center can. Changes in the proposed regulations should be made to address the above.

Next, the border hospital study further states that non-governmental contracturals (i.e., discounts) account overall for only 3% against W. Va. hospital gross patient revenue ("GPR") in both 1989 and 1990. This even includes PEIA as a non-governmental discount at 1-1/2% of the 3%. We would interpret this to mean that actually non-governmental discounts (involving third party payers like us) account really only for 1-1/2% against GPR, when

governmental discounts accounted for 20% and 23% for 1989 and 1990 respectively of GPR. We point this out because obviously HCCRA cannot control governmental discounts which are becoming bigger and bigger, putting much more pressure on the private sector. If all these "increases" are absorbed by the private sector, individuals not only may be losing their health care but maybe also their jobs. We all know that health care costs are becoming a larger part of overall costs to industry. In fact, one W. Va. company we know of is spending approximately \$54 Million a year on health care costs.

Finally, what we do believe needs to be done in these proposed regulations is:

- (1) The border hospital situation is a rather delicate, peculiar, and precarious one. We, as other third party payers, need to be able to freely negotiate contracts with W. Va. hospitals on the border (of course within the statutory limitations). This needs to be reflected in these regulations by allowing W. Va. hospitals to be able to freely negotiate discount contracts in relation to the hospital cost-based regulations. If they are "handcuffed" by restrictive requirements, much business can be lost to out-of-state border hospitals. This is a fact!
- (2) We need these regulations to allow the hospital discount contracts to remain confidential to the general public (and especially competing hospitals) and only be revealed, for good reason, to necessary parties under strict protective orders. We, of course, realize HCCRA is required to have these

contracts within the purview of rate setting; however, opening these contracts to everyone will undoubtedly allow one hospital to play against another. Soon, the highest rates may become the benchmark for all the rest. In addition, if hospital contracts do not remain confidential, out-of-state border hospitals will have an inherent advantage over W. Va. border hospitals. We, as you know, are aware of the litigation that took place surrounding this subject. We also believe that the Legislature did not succinctly require HCCRA to "reveal the rates to anyone who asks for them." The insurance commissioners in both W. Va. and Ohio for years have recognized the need to keep the contract rates confidential. We know our business, and we can tell you that nothing good will come out of opening up these rates to the "public" except help some of the hospitals in their future negotiations and will increase our premiums, which is not good for our groups, members, or W. Va.

Thank you for this time before you, and we respectfully request you give these comments careful consideration in this important set of regulations you have proposed.

ORIGINAL

BEFORE THE HEALTH CARE COST REVIEW AUTHORITY

1992 SEP 10
HEALTH C

ADJ. CLERK

IN RE: PUBLIC HEARING ON A PROPOSED RULE

TITLE: TEMPORARY APPROVAL OF DISCOUNT CONTRACTS FOR
BORDER HOSPITALS

WV CODE 16-29B-8(a)(1) 19a. 20

The following is a transcript of the proceedings held before the Health Care Cost Review Authority, 100 Dee Drive, Charleston, Kanawha County, West Virginia, on the 17th day of August, 1992, commencing at 9:40 a.m., before Sherry M. Cordle, Certified Court Reporter and Notary Public in and for the State of West Virginia, pursuant to Notice.

APPEARANCES: CHARLES M. JOHNSON, JR., Hearing Examiner
WALTER DALE, Board Member
ROBERT HATFIELD, Board Member
DAVID FORNASH, Executive Director

I N D E X

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1 EXAMINER JOHNSON: I'd like to go ahead and call
2 this hearing to order.

3 My name is Charles Johnson. I'll be the
4 Hearing Examiner today. We are here in order to take public
5 comment regarding some emergency and proposed rules regarding
6 the Temporary Approval of Discount Contracts for Border
7 Hospitals.

8 I'll just briefly summarize the rule. The
9 rules we're considering today are proposed rules appearing at
10 West Virginia Code of State Regulations 65-22-1. The recent
11 House Bill 2194 requested that the HCCRA examine certain
12 problems with border hospitals and the HCCRA conducted a study
13 and filed the study with the Governor and the Legislature in
14 May of '92. and that study identified certain problems with
15 border hospitals. including some significant volume at risk.
16 and also there was some concern about negotiating discount
17 contracts with those facilities.

18 In order to deal with that specific problem,
19 these regulations were proposed and were filed on July 15th of
20 1992.

1 I'd like to make sure everyone in the room
2 has signed in. Even if you're not going to make an oral
3 presentation. I'd like to have everyone sign-in.

4 In addition to that. I note that there are
5 several parties not present who have requested that we delay
6 the proceedings. I would propose at this time that we merely
7 hold them over, take a short break if they're not present at
8 the conclusion of the hearing in order to allow them the
9 opportunity to appear, and at that point before I open up the
10 proceedings. I'd like to introduce the parties that are here on
11 behalf of the HCCRA.

12 To my far left is David Fornash. He's the
13 Executive Director. To my immediate left is Walter Dale. He's
14 one of the Board Members with the HCCRA, and to my right is
15 Robert Hatfield, another Board Member with the HCCRA.

16 With those introductions. I'd like to turn
17 the presentation over -- Do I have the first person prepared to
18 make a written and oral presentation? Would you identify
19 yourself for the record, please?

20 MR. GAVIN: My name is Bill Gavin. I'm an

1 employee of Mountain State Blue Cross/Blue Shield. I'll try to
2 keep my comments brief.

3 EXAMINER JOHNSON: Thank you, Mr. Gavin.

4 MR. GAVIN: The Regulations being developed
5 appear to be an effort to allow marketplace forces to coexist
6 with HCCRA's regulatory responsibilities.

7 HCCRA's recognition that marketplace forces
8 do impact on West Virginia's health care system is commendable.
9 The impact is perhaps greater on our border hospitals since
10 they must not only compete with in-state facilities, but also
11 with those in neighboring states.

12 I think it would be also significant to note
13 that most of the states bordering West Virginia are free-
14 enterprise states, and Maryland, of course, being the most
15 significant exception.

16 Mountain State Blue Cross/Blue Shield is
17 concerned that the benefits of the proposed regulations are
18 largely negated by what appear to be very stringent
19 restrictions in the current document.

20 While we will be submitting comments in

1 writing. we feel that there are two that are of particular
2 importance. The first is in defining a border hospital as
3 being one who is located within 10 miles of a competing
4 out-of-state hospital that is comparable, both in terms of beds
5 and services. is too restrictive.

6 It takes only 10 to 20 minutes to drive 10
7 miles today with the roads and with this criteria. very few of
8 the border hospitals will qualify under these regulations.

9 We would propose that the criteria for the
10 border hospitals give much more account to the natural flow of
11 commerce. In particular. we would look to the standard
12 metropolitan statistical areas. the SMSAs. that are defined by
13 the U.S. Government. In the case of non-metropolitan areas
14 and other criteria that would be looked to is the study area
15 that is used by HCCRA in evaluating Certificate of Need
16 applications.

17 In any event. Mountain State believes that a
18 minimum of 20 miles would be appropriate.

19 Since a hospital's competitive position is
20 service specific. the requirement that out-of-state hospitals

Proceedings

1 have similar beds and services should be deleted.

2 Secondly, that instead of looking at the
3 proportion of a hospital's patients that are at risk, we would
4 propose that the border hospitals be permitted to use the total
5 amount of cost revenue to demonstrate that they are at
6 significant risk. In today's highly inflated health care
7 economy even a relatively small number of patients represent a
8 material amount of cost revenue for a hospital.

9 Our other recommendations for modifications
10 to the current document also aim to eliminate unnecessary
11 restrictions and thereby maximizing ten of these regulations,
12 which we believe is to give border hospitals the opportunity to
13 compete successfully with their out-of-state competitors.

14 I thank you very much for the opportunity to
15 comment.

16 EXAMINER JOHNSON: Thank you, Mr. Gavin. Do you
17 have some written comments to submit that would echo your oral
18 comments today?

19 MR. GAVIN: Yes. I do, and which also elaborate
20 on several other technical points.

1 EXAMINER JOHNSON: We'll be happy to take those
2 into consideration.

3 At this point, are there further persons in
4 attendance wishing to make oral comments on the proposed rules?

5 (WHEREUPON, there was no response.)

6 EXAMINER JOHNSON: I note none have signed in and
7 none have indicated as such.

8 I'd like to take a short adjournment and I
9 want to indicate for the people in attendance that we want to
10 keep the record open for a short period of time to allow the
11 others the opportunity to present their comments. We hope that
12 this won't be a lengthy process and we'll keep you advised as
13 to that. Thank you.

14 (WHEREUPON, a brief recess was
15 taken until 10:03 a.m., at which
16 time the following proceedings
17 were had.)

18 EXAMINER JOHNSON: We are reconvening the hearing
19 regarding the Temporary Approval of Discount Contracts for
20 Border Hospitals.

1 We previously took the oral comments of Mr.
2 Bill Gavin on behalf of Mountain State Blue Cross/Blue Shield.
3 A copy of those comments has been submitted, as well as his
4 written comments and they are available for public review.

5 At this point I note that Mr. Bob Kota of The
6 Health Plan of the Upper Ohio Valley wants to make some
7 further comments and I'd like to also indicate for the record
8 that Weirton Medical Center has filed some written comments
9 regarding the proposed rules, which will be made a part of the
10 record today.

11 Mr. Kota, are you prepared to make some
12 comments?

13 MR. KOTA: First, we apologize for being late.
14 We're sorry: the weather had us down a little bit.

15 My name is Bob Kota and I'm the General
16 Counsel with The Health Plan of the Upper Ohio Valley, and
17 Patty Fast is with me: she is our Vice President of Operations
18 at The Health Plan. Good morning, Gentlemen.

19 It is obvious to us that these proposed
20 regulations concerning border hospitals have emanated from West

1 Virginia Code 16-29B-19a in which the Legislature required
2 HCCRA to do a report to include, "A separate examination of
3 those problems associated with hospitals located within 20
4 miles of the borders of this state and separate recommendations
5 on resolving those problems." This is, we guess, in concert
6 with the direction by the Legislature to, "Examine the problems
7 associated with health care costs in this state, including
8 those associated with discount contracts and the shifting of
9 costs."

10 We're here hopefully to give HCCRA some
11 important input concerning these regulations, and our hope is
12 that they are developed to best serve the West Virginia health
13 care consumer.

14 I work for The Health Plan of the Upper Ohio
15 Valley, Inc.. We are a non-profit, West Virginia chartered
16 corporation. We're headquartered in St. Clairsville, Ohio,
17 across the river from Wheeling, West Virginia, and we are a
18 federally qualified health maintenance organization, an HMO.
19 We currently have approximately 77,000 members enrolled and
20 receiving health care through our organization. About half are

1 Ohio residents and about half are West Virginia residents.

2 We provide health care coverage for
3 individuals and groups or employers, both large and small. We
4 have a Medicare cost contract available for Medicare eligible
5 retirees, and we also cover some federal, state and local
6 governmental employees.

7 As an HMO, we are mandated by state law to
8 provide comprehensive medical coverage, including preventative
9 care, for our members, which translates that there are no
10 deductibles, no co-pay comprehensive health care coverage, and
11 we do it well.

12 We must compete with health care insurers
13 such as indemnity insurance companies, which can alter their
14 coverage by using reductions from first dollar coverage in the
15 form of deductibles, co-pays, exclusion of pre-existing
16 conditions, and limiting the dollar amount to be spent on a
17 specific person, i.e. caps.

18 Our administrative costs at The Health Plan
19 are about 6 percent, which means that for every dollar of
20 premium we take in, 94 cents is paid back for health care.

1 This is tremendously efficient for our HMO industry and
2 unbelievably low for the indemnity insurance industry.

3 We, as an HMO, represent managed care, which
4 means we provide proper health care for our members by reducing
5 the number of unnecessary expensive medical tests and
6 procedures that for proper treatment may not be necessary. We
7 do this with utilization review procedures. The doctors and
8 hospitals in our contract network work with us to provide
9 proper care with little waste.

10 Even though our medical coverage is
11 comprehensive medical coverage, we have kept our premiums
12 affordable, even when compared with insurers which have
13 substantial deductibles and co-pays, which, of course, come out
14 of the individuals' pockets. These reasonable premium levels
15 have afforded groups, i.e. employers, who utilize us for their
16 health care needs to provide comprehensive coverage for their
17 employees and at the same time help them stay competitive in
18 their industry and viable to continue to provide jobs in West
19 Virginia.

20 One of the most important ways we have been

1 able to provide our full coverage at acceptable premiums has
2 been our provider contracts. Most of the hospitals in our
3 contract network have been with us for years, and we believe
4 we have built a rapport and a positive working relationship
5 with them.

6 A statement found in HCCRA's border hospital
7 study reflects this in that hospital administrators in our area
8 stated that HMO and PPO, Preferred Provider Organization,
9 business represented. "Desirable business opportunities," and
10 in this area of West Virginia, a significant number of patients
11 are already being served by HMOs and PPOs.

12 What do our contract hospital providers get
13 in return for the discount contracts they give us? Large
14 volume of patients and prompt payment. In most instances our
15 hospitals are paid within 30 to 45 days of receipt of their
16 bills. These two assets coming from our contracts are exactly
17 what the border hospital study on page 81 said is needed to
18 substantiate discount contracts.

19 In our case, a lot of the patient volume is
20 coming from out-of-state, across the border, into West

1 Virginia. This is reflected in a statement in the study at
2 page 74: "The following areas enjoy the benefit of additional
3 patient utilization as follows: Approximately 30 percent of
4 all patients admitted to Ohio County hospitals are from out of
5 state."

6 And on page 77: "Also notable is the response
7 to the Ohio County survey which indicated that a significant
8 percentage of those surveyed stated that their, '... health
9 insurer required me to use this hospital.' This is, in fact,
10 very beneficial if it is a West Virginia hospital that the
11 patient is required to use. It would appear in Ohio County
12 that specific contracts may be in place in West Virginia
13 hospitals which cause patients to be referred or even required
14 to use a specific hospital in West Virginia."

15 We can tell you that this is true. Because
16 of this. West Virginia border hospitals need to be able to
17 continue to freely contract with us and other third party
18 payers so that these out-of-state patients will continue to
19 inflow into West Virginia hospitals. and the West Virginia
20 patients stay here.

1 Out-of-state hospitals can freely contract
2 and if unnecessary impediments on discount contracts are
3 placed on West Virginia border hospitals, the patient flow
4 could go out of West Virginia.

5 The study touches on this on page 77 by
6 stating: "... it is obvious that West Virginia border hospitals
7 have the potential to either benefit significantly from patient
8 flow into West Virginia, or be at a great disadvantage if the
9 patient flow is out-of-state."

10 Also stated in the border hospital study at
11 page 82 is found: "Patient flow studies and other analyses have
12 confirmed that certain areas of this state have significant
13 patient volume at risk if they cannot remain competitive with
14 out-of-state hospitals."

15 Again, there are no impediments to the
16 out-of-state hospitals to freely contract with us and other
17 third party payers, and if they want more of the business in
18 the future, they may decide to negotiate other certain
19 discounts to get it. The out-of-state hospitals would love to
20 have this business. This is not what we want to happen, and we

1 believe neither HCCRA nor the Legislature wants this either.

2 We must bring to your attention that
3 regarding the definition of border hospital in the proposed
4 regulations, the mileage and the definition limitation to that
5 of a hospital of a similar size and array of services will not
6 protect a West Virginia hospital.

7 Ten miles is much too short a distance, and
8 even much smaller out-of-state hospitals, or even specialty
9 centers, can steal away very profitable business by offering
10 services, say lab work, mammograms, cancer treatment, at a
11 lower cost if the West Virginia hospitals can't freely contract
12 with a third party payer as the out-of-state hospital or
13 specialty center can. Changes in the proposed regulations
14 should be made to address the above.

15 Next, the border hospital study further
16 states that non-governmental contracturals, i.e. discounts,
17 account overall for only 3 percent against West Virginia
18 hospital gross patient revenue, GPR, in both 1989 and 1990.
19 This even includes PEIA as a non-governmental discount at 1-1/2
20 percent of the 3 percent.

1 We would interpret this to mean that actually
2 non-governmental discounts, involving third party payers like
3 us, account really only for 1-1/2 percent against GPR, when the
4 governmental discounts accounted for 20 and 23 percent for 1989
5 and 1990 respectively of GPR.

6 We point this out because obviously HCCRA
7 cannot control governmental discounts, which are becoming
8 bigger and bigger, putting more pressure on the private
9 sector. If all these increases are absorbed by the private
10 sector, individuals not only may be losing their health care,
11 but also maybe their jobs.

12 We know that health care costs are becoming a
13 larger part of overall cost to industry. In fact, one West
14 Virginia company we know of is spending approximately \$54
15 million a year on health care costs.

16 Finally, what do we believe needs to be done
17 in these proposed regulations: First, the border hospital
18 situation is a rather delicate, peculiar and precarious one.
19 We, as other third party payers, need to be able to freely
20 negotiate contracts with West Virginia hospitals on the border.

1 of course, within the statutory limitations.

2 This needs to be reflected in these
3 regulations by allowing West Virginia hospitals to be able to
4 freely negotiate discount contracts in relation to the hospital
5 cost-based regulations. If they are handcuffed by restrictive
6 requirements, much business can be lost to out-of-state border
7 hospitals. This is a fact.

8 Two; we need these regulations to allow the
9 hospital discount contracts to remain confidential to the
10 general public and especially competing hospitals, and only be
11 revealed for good reason to necessary parties under strict
12 protective orders.

13 We, of course, realize that HCCRA is required
14 to have these contracts within the purview of rate setting.
15 However, opening these contracts to everyone will undoubtedly
16 allow one hospital to play against another. Soon the highest
17 rates may become the benchmark for all the rest.

18 In addition, if hospital contracts do not
19 remain confidential, out-of-state border hospitals will have an
20 inherent advantage over West Virginia border hospitals. We, as

1 you know, are aware of the litigation that took place
2 surrounding this subject. We also believe that the Legislature
3 did not succinctly require HCCRA to reveal the rates to anyone
4 who asks for them.

5 The insurance commissioners in both West
6 Virginia and Ohio for years have recognized the need to keep
7 the contract rates confidential. We know our business, and we
8 can tell you that nothing good will come out of opening up
9 these rates to the public, except help some of the hospitals
10 in their future negotiations and will increase our premiums,
11 which is not good for our groups, our members, or West
12 Virginia health care consumers.

13 Thank you for this time before you, and we
14 respectfully request you to give these comments careful
15 consideration in this important set of regulations that you
16 have proposed.

17 Thank you very much, Gentlemen.

18 EXAMINER JOHNSON: Thank you, Mr. Kota. Do you
19 have a copy, a written copy to submit to the HCCRA?

20 MR. KOTA: (Indicating).

1 EXAMINER JOHNSON: Are there further comments to
2 be considered today. either written or oral?

3 (WHEREUPON. there was no response.)

4 EXAMINER JOHNSON: Based upon that. hearing no
5 further requests for comments. this will conclude the hearing
6 this morning. We will take all of your well-considered
7 comments to heart and try to make any appropriate adjustments
8 to the regulations.

9 These comments will be presented to the Board
10 and some responses made as soon as possible. If there's
11 further need for information regarding that. parties may
12 contact me. and based upon that. that will conclude the hearing
13 this morning.

14 (WHEREUPON. the hearing
15 was concluded at 10:18 a.m.)

REPORTER'S CERTIFICATE

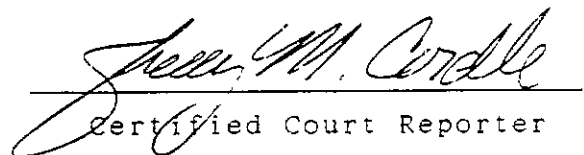
STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, to wit:

I, the undersigned, Sherry M. Cordle, Certified Court Reporter and Notary Public in and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the testimony adduced or proceedings had in the aforementioned case, as set forth in the caption hereof.

Given under my hand this 2nd day of September, 1992.

My commission expires November 8, 1998.



Certified Court Reporter
Notary Public