

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

Form #1

Do Not Mark In this Box

FILED  
1992 JUL 31 11:58

**NOTICE OF PUBLIC HEARING ON A PROPOSED RULE**

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 65

RULE TYPE: Legislative; CITE AUTHORITY WV Code §16-2D-4(a)(5)

AMENDMENT TO AN EXISTING RULE: YES \_\_\_ NO X

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

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 23

TITLE OF RULE BEING PROPOSED: Exemption For New Primary Care Services

DATE OF PUBLIC HEARING: August 31, 1992 TIME: 10:00 a.m.

LOCATION OF PUBLIC HEARING: Health Care Cost Review Authority

100 Dee Drive, Suite 201

Charleston, West Virginia 25311-1692

Large Conference Room

COMMENTS LIMITED TO: ORAL\_\_\_, WRITTEN\_\_\_, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Health Care Cost Review Authority

100 Dee Drive, Suite 201


Charleston, WV 25311-1692

ATTN: Marianne K. Stonestreet

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.

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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

  
LARRY C. FIZER, CHAIRMAN

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STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Gaston Caperton  
Governor

July 27, 1992

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

Re: HCCRA Rule: Exemption for New Primary  
Care Services

Dear Secretary Hechler:

Enclosed please find a proposed legislative rule of the Health Care Cost Review Authority regarding Exemption for New Primary Care Services. 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  
Department of Health and Human Resources

WDW/jah

Enclosure

cc: Legislative Rule-Making Review Committee

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Exemption For New Primary Care Services

Type of Rule:  X  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.

No cost to the agency is associated with this rule.

3. Objectives of these rules:

To provide an exemption from certificate of need review for new primary care services.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

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

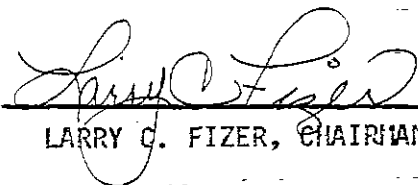
N/A

C. Economic Impact on Citizens/Public at Large.

New primary care services are promoted through this rule. If these services are more readily available, the public, will not have to travel as far for medical care and should pay less for medical care than in the acute care setting.

Date July 31, 1992

Signature of Agency Head or Authorized Representative

  
LARRY C. FIZER, CHAIRMAN

SUMMARY OF PROPOSED RULE

The proposed legislative rule implements certain provisions of Senate Bill 88, particularly W. Va. Code §16-2D-4(a)(5). The rule provides for an exemption from certificate of need review for new primary care services.

FILED

TITLE 65  
WEST VIRGINIA LEGISLATIVE RULE  
HEALTH CARE COST REVIEW AUTHORITY

JUL 31 AM 11 58

SERIES 23

Title: EXEMPTION FOR NEW PRIMARY CARE SERVICES

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\$65-\_\_-1 General

1.1. Scope - This legislative rule establishes an exemption from certificate of need review for certain primary care services.

1.2. Authority - W. Va. Code §16-2D-4(a)(5).

1.3. Filing Date - July 31, 1992.

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

\$65-\_\_-2 Definitions

2.1. Allowable Distance - In rural areas, for primary roads in non-mountainous terrain, twenty (20) miles; for primary roads in mountainous terrain, fifteen (15) miles; for interstates or other limited access highways, twenty-five (25) miles. In non-rural areas, for areas linked primarily by

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primary roads, seven (7) miles; and for areas linked primarily by interstates and other limited access highways, ten (10) miles.

2.2. Board - The West Virginia Health Care Cost Review Authority which is designated to administer the Certificate of Need Program pursuant to W. Va. Code §16-29B-11.

2.3. Community-Based Primary Care Center - A primary care facility operated by a tax exempt, non-profit organization with a community board that provides or will provide primary care services to people without regard to ability to pay and offers health education and preventive services to people in its service area.

2.4. Community Board - The governing board of a community-based primary care center which has a sufficient community representation to qualify that center as a federally qualified health center.

2.5. Comprehensive Community-Based Primary Care Center - A primary care facility operated by a tax exempt, non-profit organization with a community board that provides or will provide primary care services to people without regard to ability to pay and offers health education and preventive

services to people in its service area. In addition, the primary care center is open to provide primary care services for at least thirty-two (32) hours per week and qualifies as a federally qualified health center.

2.6. New Primary Care Services - Health-related services that emphasize first contact patient care that link the patient to the full spectrum of health services, including health education, preventive services, secondary, and tertiary care. Such services may include maternal and child health programs, pediatric services, dental care, nutrition programs, adolescent care programs, women's health services, geriatric care, pharmaceutical services, lifestyle modification, wellness, and programs aimed at special community needs such as black lung and other occupational health clinics, health screening programs, and transportation services. Primary care services may be provided by physicians, nurse practitioners, physician assistants, and nurse-midwives. New primary care services may include new services; new facilities and the replacement or maintenance of existing primary care services and facilities, but shall not include the acquisition, offering, or development of major medical equipment otherwise subject to review under the provisions of W. Va. Code §16-2D-4(a).

2.7. Rural Area - An area which does not contain a municipality with a population of 20,000 people.

2.8. Service Area - For each comprehensive community-based primary care center, the service area is the geographic area or population groups approved by the Public Health Service of the United States Department of Health and Human Services as the center's service area. If a community-based primary care center does not report its service area to the Public Health Service, the center shall obtain approval of its service area from the Office of Community and Rural Health Services, within the state Department of Health and Human Resources.

2.9. State Agency - Health Care Cost Review Authority.

2.10. Underserved Communities - A community is considered underserved with respect to new primary care services if any of the following are true:

2.10.1. The services and facility are to be located within the service area of the comprehensive community-based primary care center proposing such services; and the services are not located within the service area of other comprehensive community-based primary care centers; or

2.10.2. The services are located at least the allowable distance from another comprehensive community-based primary care center.

§65-\_\_-3. Exemption Criteria

3.1. To qualify for an exemption from certificate of need review for the creation of new primary care services the applicant must meet the following criteria:

3.1.1. The applicant must be a comprehensive community-based primary care center;

3.1.2. The applicant must propose to provide new primary care services which services must be available to the public within one year from the date the exemption application is filed with the Authority.

3.1.3. The proposed new primary care services must be located in an underserved community and the services must be available to people without regard to ability to pay.

§65-\_\_-4. Exemption Procedure

4.1. Each applicant seeking an exemption pursuant to this rule, must file with the board a letter of intent at

least fifteen (15) days before the submission of the application. The letter of intent shall contain sufficient information to advise the board of the nature of the exemption sought and outline the grounds for such exemption.

4.2. Upon receipt of the letter of intent, the board shall publish a notice in the Saturday Charleston newspapers and the State Register. The notice shall identify the legal entity seeking an exemption, the type of exemption requested, and a description of the proposal. The notice shall also state the rights of affected parties to a hearing.

4.3. In order to obtain the exemption, each applicant must file an application with the board no sooner than the fifteenth day or later than the thirtieth day following the filing of the letter of intent. The application shall contain the following:

4.3.1. Information that demonstrates that the applicant meets the exemption criteria required by sections 3.1.1., 3.1.2., and 3.1.3.;

4.3.2. A copy of the applicant's by-laws and a list of the governing board, including name, occupation, address, and telephone number of each board member. Such by-laws must fully describe the composition of the community board;

4.3.3. Appropriate documentation of the applicant's tax exempt non-profit status, such as a copy of the organization's 501(c)(3) non-profit letter or a copy of the application for such designation; or evidence that the applicant is designated a government entity;

4.3.4. A map detailing the geographical boundaries of the applicant's existing and projected service area and an estimate of the population within the service area, with an explanation how the population figure was derived. The map shall show the mileage from the site of the proposed new services to other sites operated by community-based primary care centers in the service area;

4.3.5. An assurance that people residing in the area to be served by the new services will receive such services without regard to ability to pay;

4.3.6. A description of the financial feasibility of delivering and maintaining the proposed new services, of the start-up funding involved, the applicant's budget, most recent audit, and financial statement and capital expenditures for the project;

4.3.7. A listing of projected physician(s), other practitioners, administrators, and other site staff to be

employed by the organization, if available, identified by name, and in addition, a summary of what recruitment prospects exist or are being planned for vacant positions;

4.3.8. A timetable of the projected opening of the site to include source of funding, recruitment plans, occupancy (lease, rent, purchase, or construct), staffing, and other factors relevant to the opening of the site; and

4.3.9. Information with respect to the projected annual number of users and encounters to be served at the site. In instances involving an existing provider of primary care services, actual information regarding the operating budget, users, and encounters is to be provided; and

4.3.10. The application must contain a verification signed by the chairperson of the community board.

4.4. Upon receipt of the application, the board shall send a copy of the application to the Office of Community and Rural Health Services. The Office of Community and Rural Health Services shall provide a recommendation of either exemption or non-exemption from certificate of need review to the board within thirty (30) calendar days from its receipt of the application, provided all information and documentation required by this rule has been furnished in the

application. Failure by the applicant to provide complete information shall delay the exemption decision until all information is furnished.

4.5. The Office of Community and Rural Health Services shall review the application and advise the board whether the application proposes new primary care services as defined by this rule and whether the applicant proposes to provide services in an underserved community as defined by this rule.

4.6. Upon receipt of the recommendation from the Office of Community and Rural Health Services and after determining that the application is complete and after the date has passed in which an affected person may request a hearing, the board shall publish a notice in the Saturday Charleston newspapers and the State Register. The notice shall identify the applicant, shall describe the proposal and shall, if a hearing on the exemption is requested, state the time, place, and date of the hearing.

4.7. If a hearing has not been requested, then following the publication of the notice in the Saturday Charleston newspapers and the State Register, the board shall within ten (10) days issue a written decision on the application which decision is a final decision. The board

shall publish notice of the decision in the Saturday Charleston newspapers and the State Register.

4.8. If a hearing has been requested by an affected party, the board shall follow the provisions of subsections 5.1, 5.2 and 5.3 of this legislative rule.

4.9. In order to be effective, the request for a hearing must be from an affected party and must be filed in writing with the board within ten (10) days of the publication of the notice in the Saturday Charleston newspapers as required by subsection 4.2.

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Requests for Hearings

5.1. If an affected person requests a hearing, the board shall terminate the exemption review period. The board or its designee shall hold a hearing within thirty (30) days of the request for a hearing unless the board sets a later date upon a showing of good cause.

5.2. The board or its designee 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 board or a hearing examiner appointed by it, the parties may engage in discovery as provided by the West

Virginia Rules of Civil Procedure; except that the scope of discovery is limited to relevant and admissible evidence.

5.3. At the conclusion of the hearing, the parties may submit proposed findings of fact, conclusions of law, and legal briefs. The board has ten (10) days from the receipt of those items or the closure of the record if those items are not tendered to make its determination in writing.

5.4. A written decision made pursuant to subsection 5.3 is a final decision. The board shall publish notice of the decision in the Saturday Charleston newspapers and the State Register.

\$65-\_\_\_\_-6 Competing Applications

If two (2) or more applications which involve part or all of the same service area are received by the board within thirty (30) days of one another, the Office of Community and Rural Health Services shall advise the board whether each applicant would be eligible in the absence of the competing application. If both applicants are eligible, the board shall determine which applicant shall receive the exemption.

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Severability

The provisions of this rule are severable. If any portion of this rule is held invalid, the remaining provisions remain in effect.