

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

Do Not Mark In This Box
Filing Date

FILED

Nov 20 3 57 PM '92

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

Dec. 4, 1992 *gr*

NOTICE OF AN EMERGENCY RULE

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 65

CITE AUTHORITY: W. Va. Code §16-2D-4(a)(5) and 8

EMERGENCY 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 RULE BEING FILED AS AN EMERGENCY: 23

TITLE OF RULE BEING FILED AS AN EMERGENCY: Exemption For New
Primary Care Services

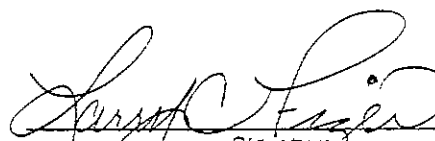
THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The immediate implementation of this rule is required to prevent the loss of approximately fourteen (14) million dollars in federal and state grant money. Applications for exemptions must be received prior to January 1, 1993, and approved no later than March 1, 1993, for applicants to qualify for the federal and state dollars which have been allocated for these projects. This grant money will expire unless this rule is implemented as an emergency rule.

5.40

Use Additional Sheets If Necessary.


Signature
LARRY C. FIZER, Chairman

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.

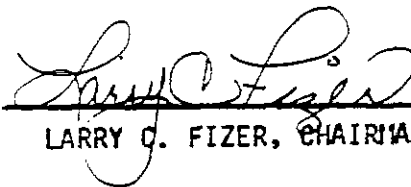
N/A

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

DATE: November 20, 1992
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: Health Care Cost Review Authority
EMERGENCY RULE TITLE: Exemption For New Primary Care Services

1. Date of filing: November 20, 1992
2. Statutory authority for promulgating the emergency rule: W. Va. Code §16-2D-4(a)(5) and 8
3. Date of filing of proposed legislative rule: July 31, 1992

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

New language

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

The immediate implementation of this rule is required to prevent the loss of approximately fourteen (14) million dollars in federal and state grant money. Applications for exemptions must be received prior to January 1, 1993, and approved no later than March 1, 1993, for applicants to qualify for the federal and state dollars which have been allocated for these projects. This grant money will expire unless this rule is implemented as an emergency rule.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

See response to #6.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See response to #6.

FILED

Nov 20 3 57 PM '92

EMERGENCY
TITLE 65
WEST VIRGINIA LEGISLATIVE RULE
HEALTH CARE COST REVIEW AUTHORITY

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 23

Title: EXEMPTION FOR NEW PRIMARY CARE SERVICES

\$65-23-1 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) and 8.

1.3. Filing Date - November 20, 1992.

1.4. Effective Date - _____.

\$65-23-2 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 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 Organization - A 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. The facility must be open to provide primary care services for a minimum of thirty-two (32) hours per week.

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

2.5. New Primary Care Services - Health-related services that emphasize first contact patient care and that

link the patient to the full spectrum of health services, including health education, preventive services, and secondary and tertiary care. The 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 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-1 et seq. or the acquisition, offering, or development of CT scanners, ambulatory surgical facilities, lithotripsy, magnetic resonance imaging or radiation therapy. New primary care services shall, furthermore, not include an obligation for a capital expenditure incurred by or on behalf of the community-based primary care organization in excess of the expenditure minimum of \$750,000.00.

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

2.7. Service Area - For each community-based primary care organization, 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 organization's service area. If a community-based primary care organization does not report its service area to the Public Health Service, the organization 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.

2.8. State Agency - Health Care Cost Review Authority.

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

2.9.1. The services are to be located within the service area of the community-based primary care organization proposing the services; and the services are not located within the service area of other community-based primary care organizations; or

2.9.2. The services are located at least the allowable distance from another community-based primary care organization.

\$65-23-3 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 community-based primary care organization;

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; and

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.

\$65-23-4 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 the 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 subsections 3.1.1., 3.1.2., and 3.1.3. of this rule;

4.3.2. A copy of the applicant's by-laws and a list of the governing board, including the name, occupation, address, and telephone number of each board member. The 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 of 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 organizations in the service area;

4.3.5. An assurance that people residing in the area to be served by the new services will receive the 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;

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. A verification signed by the chairperson of the community board.

4.4. Upon receipt of the application, the board shall determine within fifteen (15) days whether or not the application is complete. If the application is not complete, the board may request additional information. Upon receipt of that additional information, the board has fifteen (15) days within which to determine if the application is complete. Failure by the applicant to provide complete information shall

delay the exemption decision until all information required is provided.

4.5. Upon determining that the application is complete, 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.

4.6. 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.

4.7. Upon receipt of the recommendation from the Office of Community and Rural Health Services and after determining that the application is complete and that 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.

4.8. 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.

4.9. 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.

4.10. 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 of this rule.

\$65-23-5

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 of this rule is a final decision. The board shall publish notice of the decision in the Saturday Charleston newspapers and the State Register.

\$65-23-6

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.

\$65-23-7

Severability

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