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December 4, 1992

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Health Care Cost Review Authority

RULE: New Rule, Series 23, Exemption for New Primary Care Services

DATE FILED AS AN EMERGENCY RULE: November 20, 1992

DECISION NO. 33-92

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

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Secretary of State

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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DECISION

EMERGENCY RULE DECISION (ERD 33-92)

AGENCY: Health Care Cost Review Authority
RULE: New Rule, Series 23, Exemption for New Primary Care Services

FILED AS AN EMERGENCY RULE: November 20, 1992

- par. 1 The Health Care Cost Review Authority (HCCRA) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The HCCRA filed this emergency rule with supporting documents with the Secretary of State November 20, 1992 and with the LRMRC November 20, 1992.

par. 7 It is the determination of the Secretary of State that the HCCRA has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code 16-2D-4(a)(5) reads:

The creation of new primary care services located in communities that are underserved with respect to primary care services: provided, That to qualify for this exemption, an applicant must be a community-based nonprofit organization with a community board that provides or will provide primary care services to people without regard to ability to pay: Provided, however, That the exemption from certificate of need review of new primary care services provided by this subdivision shall not include the acquisition, offering or development of major medical equipment otherwise subject to review under the provisions of this article or to include the acquisition, offering or development of CT scanners, ambulatory surgical facilities, lithotripsy, magnetic resonance imaging or radiation therapy. The office of community and rural health services shall define which services constitute primary care services for purposes of this subdivision, and shall, to prevent duplication of primary care services, determine whether a community is underserved with respect to certain primary care services within the meaning of this subdivision. Any organization planning to qualify for an exemption pursuant to this subdivision shall submit to the state agency a letter of intent describing the proposed new services and area of service.

par. 9 The WV Code further states in part in §16-2D-8:

(a) The state agency is hereby empowered to promulgate additional rules and regulations.

par. 10 It is the determination of the Secretary of State that the HCCRA has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

- par. 12 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.
- par. 13 The facts and circumstances as presented by the HCCRA are as follows:

The immediate implementation of this rule is required to prevent the loss of approximately 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.
- par. 14 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "time limitation".
- par. 15 This decision shall be cited as Emergency Rule Decision 33-92 or ERD 33-92 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Health Care Cost Review Authority, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

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