

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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1992 SEP 18 PM 1:33

OFFICE OF WEST VIRGINIA
GOVERNMENT

**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 §16-2D-4(a)(5) and 8

AMENDMENT TO AN EXISTING RULE: YES NO

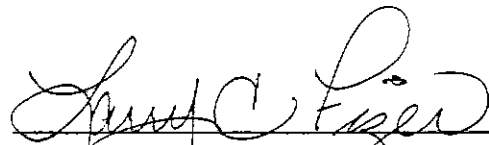
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

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

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

6.10

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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1992 SEP 18 PM 1:33

OFFICE OF WEST VIRGINIA
LEGISLATIVE COUNSEL

Rule Title: Exemption For New Primary Care Services

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.

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.

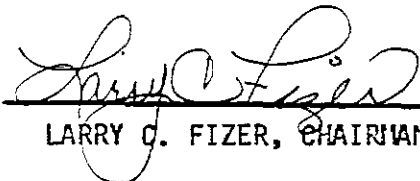
N/A

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

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: _____

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

d. Attach findings and determinations and reasons:

Attached _____

TITLE 65
WEST VIRGINIA LEGISLATIVE RULE
HEALTH CARE COST REVIEW AUTHORITY

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 - July 31, 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 Center Organization - 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. 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 ~~center~~ organization 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.~~

2.65. 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, 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) 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.

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

2.87. Service Area - For each ~~comprehensive~~ community-based primary care ~~center~~ 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 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.

2.98. State Agency - Health Care Cost Review Authority.

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

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

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

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.

§65-23-6

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.



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: September 18, 1992
RE: Brief Summary of Proposed Legislative Rule: Exemption For
New Primary Care Services; and State of Circumstances
Requiring the Rule

=====

This proposed legislative rule creates an exemption from certificate of need review for new primary care services located in communities that are underserved with respect to primary care services. The applicant must be a community-based non-profit organization with a community board that provides or will provide primary care services to people without regard to ability to pay.

This proposed rule implements certain provisions of Senate Bill 88 which was enacted by the Legislature in 1992 and which created this exemption.

MKS/jmh



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
RE: Amendments and Reasons for Amendments to Proposed
Legislative Rule: Exemption For New Primary Care Services
DATE: September 18, 1992

=====
The first major amendment to this proposed legislative rule entails an expansion of the scope of the rule to include community-based primary care organizations, as opposed to the original scope of the rule which was limited to community-based primary care centers. This expansion of the scope of the rule is evidenced by amendments to the rule on pages 2, 4, 5, and 7. The amendments which appear on these pages reflect the change in scope of the rule from primary care centers to primary care organizations. Comments were received from Weirton Medical Center, Summersville Memorial Hospital and the West Virginia Hospital Association in support of this amendment. The West Virginia Bureau of Public Health submitted written comments in opposition to this proposed amendment.

A careful reading of Senate Bill 88, specifically W. Va. Code §16-2D-4(a)(5), indicates that the purpose of the legislation is to expand primary care services to communities which are underserved with respect to this type of medical service. Accordingly, the emphasis is on expanding services and there are no specific references contained within the legislation which limit the type of provider which can provide these services. As a result, the HCCRA accepts the comments from the West Virginia Hospital Association, Summersville Memorial Hospital and Weirton Medical Center and in response thereto, has amended the rule to broaden its scope.

The second significant amendment to the rule appears on pages 3 and 4, subsection 2.5, the definition of "new primary care services." The purpose of this amendment is to clarify the definition of primary care services and therefore define more precisely what is exempted pursuant to this rule. Prior to the enactment of Senate Bill 88, the offering, development or acquisition of a primary care organization would have been reviewable. This rule, in essence, exempts said offering, acquisition or development provided the applicant does not exceed the certificate of need thresholds for major medical equipment and/or capital expenditures. It is the opinion of the HCCRA that the intent of Senate Bill 88 was to encourage offering, acquisition or development of these primary care services in medically underserved areas but not to exempt from review the acquisition of costly medical equipment and/or the renovation, construction or development of expensive facilities. Accordingly, the amendment to the definition of new primary care services was made by the HCCRA.

The West Virginia Hospital Association also suggested amending the definition of "community board" to allow hospitals to have a smaller percentage of consumer representation than federally qualified health centers. It is the opinion of the HCCRA that the federally qualified health center guidelines which require a 50% consumer representation should be equally applied to all primary care organizations. Accordingly, the HCCRA made no amendments to the rule in response to this comment from the West Virginia Hospital Association.

Finally the Agency received comments from Southern West Virginia Regional Primary Care Centers, Inc. These comments generally suggest that primary care organizations must qualify as federally qualified health centers to be exempt from the rule. The HCCRA is unclear as to the source of SWVRPCC's concerns, as the rule simply requires that the community board have a sufficient community representation to qualify that center as a federally qualified health center. This requirement is entirely different from the concerns expressed by SWVRPCC. Accordingly, the Agency made no amendments to the proposed rule and response to these comments.

No other amendments, other than those previously discussed, were made to the proposed legislative rule.

MKS/jmh

COPY

BEFORE THE HEALTH CARE COST REVIEW AUTHORITY

IN RE: PUBLIC HEARING ON PROPOSED RULE,
"EXEMPTION FOR NEW PRIMARY CARE SERVICES"

The following is a transcript of proceedings had before the Health Care Cost Review Authority, 100 Dee Drive, Charleston, Kanawha County, West Virginia, on August 31, 1992, commencing at 10:02 a.m., before Tena A. Hall, Court Reporter and Notary Public in and for the State of West Virginia, pursuant to Notice.

APPEARANCES: MARIANNE STONESTREET, General Counsel
and Hearing Examiner

WALTER DALE, Board Member

ROBERT HATFIELD, Board Member

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AUG 31 1992
10:02 AM

CS

PHYLLIS HAYNES EDENS

CERTIFIED COURT REPORTERS
2135 KAY NEVA LANE
CHARLESTON, WEST VIRGINIA 25312
(304) 984-3551 WV (800) 248-3531

I N D E X

WITNESS:

STATEMENT

Bob Whitler

3

Reporter's Certificate.....9

EXAMINER STONESTREET: This is a public hearing on Proposed Legislative Rule "Exemption for New Primary Care Services," Title No. 65, Series 23.

The hearing is being held pursuant to a Notice filed with the Secretary of State's Office on July 31, 1992.

My name is Marianne Stonestreet. I am General Counsel for the Board of HCCRA. Also present today is Board Member Mr. Walter Dale.

We are here to receive any oral comments that you may have on this proposed rule. We have received several written comments.

Is there anyone present today who cares to make an oral comment?

MR. WHITLER: (Indicating).

EXAMINER STONESTREET: Mr. Whitler.

(WHEREUPON, the following statement was made.)

MR. WHITLER: My name is Bob Whitler. I am Vice President of the West Virginia Hospital

Association.

I submitted written comments, and I thought I would just come up here, and perhaps you would have some questions concerning the written comments.

But, basically, Senate Bill 88, which was passed during the last Legislative session, was designed to expand primary care services. The Legislature was very clear that what they wanted to do was to expand primary care services, and not necessarily by any one particular method.

The Legislature said in order for an organization to be eligible for exemption from Certificate of Need, that that organization needed to be a non-profit community organization. They are very clear about that.

The original draft of the Bill said non-profit primary care center. I went personally to Pat White. She said work it out with Will Carter, who drafted the language, and the Legislative Committee in

Health and Human Resources in the House agreed that it should not read non-profit primary care center, it should read non-profit community organization.

So, any non-profit entity with a community Board that was interested in expanding primary care services where there were no existing primary care services, and there is a definition for that, would be eligible.

When you read the Rule, it says that "In order to qualify for this exemption, the Applicant must be a comprehensive community based primary care center."

So, what the Rule is doing is going back to the way the language was originally introduced in the House and the Senate, where the clear Legislative intent was that non-profit community organizations should be eligible for this exemption.

So, we have problems in terms of on page 5 where it has "Exemption Criteria".

The other major problem we have is the

definition of a community Board. According to the Rule, in order to qualify as a community Board, it has to meet the criteria of a Federally qualified community health center.

Hospitals have a different definition for community Boards. West Virginia has a Board composition law for non-profit hospitals.

Those Boards have to have 40-percent consumers. Many of them do have 50-percent consumers, but by law they have to have 40-percent consumers; whereas a Federally funded community health center has to have 50-percent consumers.

So, we also object to the definition of community Board. I am sure about this, the Legislative when they said community Board included -- in their own mind's they were including hospital community Boards, and yet the Rule excludes hospital community Boards as a definition.

The definition excludes hospitals under the definition of a community Board.

Al Walker is here, I believe, and the Health Care Planning Commission has been looking at health care delivery in West Virginia for the past year.

The No. 1 goal, I think, of the Health Care Planning Commission, is to expand preventive and primary care services. So, we strongly support the exemption from CON for new primary care services located in areas where there are currently no primary care services, or lack of primary care services.

It is just that we would like to have a level playing field. We think that non-profit organization should be a criteria for the expansion of new primary care services.

I will be glad to answer any questions.

EXAMINER STONESTREET: Does anyone have any questions?

(WHEREUPON, there was no response.)

EXAMINER STONESTREET: I would note for the record that Mr. Whitler has made a correction to

his written comments and initialed them. They will appear in our records accordingly. There was a typo, I believe.

Since we have no questions, if you have nothing further --

MR. WHITLER: Thank you very much.

EXAMINER STONESTREET: Is there anyone else who cares to make a comment on the proposed rules?

(WHEREUPON, there was no response.)

EXAMINER STONESTREET: There being no one else, we will conclude the public hearing.

(WHEREUPON, the hearing was concluded at 10:09 a.m.)

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, the undersigned, Tena A. Hall, Court Reporter, 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 1st day of
September, 1992.

Tena A. Hall

Court Reporter
Notary Public

SOUTHERN WEST VIRGINIA REGIONAL PRIMARY CARE CENTERS, INC.

Route 2, Box 382

Bluefield, West Virginia 24701

(304) 325-3621

FAX (304) 327-7462

(304) 425-9511

August 31, 1992

Larry C. Fizer, Chairperson
Health Care Cost Review Authority
100 Dee Drive
Suite 201
Charleston, West Virginia 25311

HEALTH CARE COST REVIEW AUTHORITY
AUG 31 1992
FIZER

Dear Mr. Fizer:

I would respectfully like to make the following comments regarding the proposed regulations on Senate Bill 88, which provides for an exemption from certificate of need review for new primary care services. The intent of this legislation and subsequent rules is obviously to protect primary care centers who are already in existence, as well as to facilitate the initiation of primary care services in areas in which they don't currently exist. Our concern, of course, is primarily protection of the services which we have already established.

As you are probably aware, our agency has a network of eleven primary care centers throughout southern West Virginia. We have worked very hard over the past 24 years to provide comprehensive primary care services to the residents of rural West Virginia. We now see Senate Bill 88 as a vehicle through which our establishment of these services can be protected; however, there are a few concerns which I don't feel have been adequately addressed in the proposed rules.

1. In the definition of community boards, the rules indicate that the center needs to qualify as a Federally Qualified Health Center. Indeed, several references in the rules refer to the Center being a Federally Qualified Health Center. I would like to call to your attention the fact that designation as a Federally Qualified Health Center is not automatic. To illustrate this, we filed application for eight of our centers to be designated as Federally Qualified Health Centers, however; we were only successful in actually receiving the designation for two centers because of our provider status. A requirement of Federally Qualified Health Center designation is that half the providers must be full-

Letter to Larry C. Fizer
Dated August 31, 1992
Page 2

time. In rural West Virginia, as I am sure you appreciate, the recruitment of providers is a very difficult task, and in many of our clinics, our services are provided by physicians who work part-time with us, and have their own practice. In every instance in which we were denied designation as a Federally Qualified Health Center, the major reason was lack of full-time providers. This is very distressing, particularly in view of the fact that several of our providers are full-time with the agency. However, they travel from site to site to see the patients, and our clinic schedule is structured to accommodate that type of arrangement.

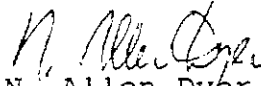
The way the rules are proposed at this point in time, inadvertently gives priority to federally funded clinics versus those clinics which are not federally funded. This is through the requirement for FQHC eligibility (federally funded clinics are automatically eligible for FQHC and do not have to go through the application process, which non-federally funded clinics do) and, through the fact that their designated service area has already been defined (whereas non-federally funded clinics would have to go through the process of having their service area defined). Certainly the services provided through the non-federally funded clinics can be of equal value to those provided through federally funded clinics. However, the structure of these rules as it stands now gives preference to clinics which already have met the model of being a federally funded clinic.

2. Another area perhaps which has not received adequate attention in these proposed rules is the local health departments. The emphasis nationwide is for local health departments to become more involved in the provision of primary care services to their patients. The local health departments have been in existence for many, many years serving residents of rural areas. If the local health department truly wishes to upgrade their services to provide more comprehensive preventive services and health education, then there should be a mechanism through which this can be facilitated.

Letter to Larry C. Fizer
Dated August 31, 1992
Page 3

Again, we applaud your efforts to establish an exemption from certificate of need for the provision of primary care services since there are so many areas of our state in which services are not being provided. However, we would request that you take the above comments into consideration before the final rules are issued.

Sincerely,



N. Allen Dyer, M.D., M.P.H.
Executive Director

NAD/dtm



600 D Street, Second Level
South Charleston, West Virginia 25303
(304) 744-9842 FAX (304) 744-9889

August 13, 1992

Marianne K. Stonestreet
Health Care Cost Review Authority
100 Dee Drive, Suite 201
Charleston, West Virginia 25311-1697

REC'D
1992 AUG 14 11 11 AM
HEALTH CARE COST REVIEW AUTHORITY

Dear Marianne:

The West Virginia Hospital Association, on behalf of its 65 member hospitals, appreciates the opportunity to comment on the following three legislative rules which implement S.B. 88.

Rule 23 - Exemption for New Primary Care Services

The West Virginia Hospital Association supports exemption from Certificate of Need for the development of new primary care services in underserved areas. During the 1992 legislative session, we supported this exemption as long as hospitals and other health care providers were treated equally. Article 2D, Section 5, clearly states that nonprofit hospitals with community boards are eligible for the exemption:

16-2D-4 Exemptions from Certificate of Need Program

(5) 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 organizations with a community board, that provides or will provide primary care services to people without regard to ability to pay.

The proposed rule does not fairly interpret the legislative intent of S.B. 88. According to the proposed rule, an applicant for exemption from Certificate of Need review "must be a comprehensive community-based primary care center."

I worked with legislators on this provision and their intent was to expand primary care services to populations in the most efficient method and not to necessarily expand primary care centers. They certainly considered nonprofit hospitals to be community-based nonprofit organizations.

We would strongly urge you and the Legislative Rule-Making Review Committee to include nonprofit hospitals as eligible applicants.

We would also request that the definition of community board be modified to conform with West Virginia's board composition law. The definition in the proposed rule states that:

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

Marianne K. Stonestreet
August 13, 1992.
Page 2

In order to qualify as a federally qualified health center (FQHC), the board needs to be at least 50 percent consumer representation. Federally funded Section 330 primary care centers automatically qualify as FQHCs. Hospitals, on the other hand, are required by law to have 40 percent consumer representation. Again, it looks like a conscious effort has been made to disqualify hospitals from taking advantage of this exemption.

Rule 24 - Exemption for Birthing Centers

The law encourages and, in some cases, mandates collaboration between nonprofit hospitals and nonprofit primary care centers in order to qualify for exemption from Certificate of Need review. I do not believe that this is reflected in the rules.

Rule 25 - Exemption for Primary Care Hospitals

This rule provides exemption from Certificate of Need review for small rural hospitals designated as rural primary care hospitals (RPCHs). The rule creates a mechanism for a RPCH to reject its designation as an RPCH within a 24 month period and restore its licensed capacity to its previous level of staffed and operated acute care beds with a Certificate of Need.

We believe that this rule fairly reflects legislative interest.

The West Virginia Hospital Association sincerely appreciates the opportunity to provide these comments. I will be at the public hearing on August 31st and would be glad to answer any questions at that time or any time between now and then.

Sincerely,



Robert D. Whitler
Vice President
Public Policy Development

RDW/tlm

c: Larry Fizer



RECEIVED
HEALTH CARE COST REVIEW AUTHORITY
AUG 24 1992

August 24, 1992

Marianne K. Stonestreet
Health Care Cost Review Authority
100 Dee Drive, Suite 201
Charleston, WV 25311-1697

Dear Ms. Stonestreet:

Weirton Medical Center appreciates the opportunity to comment on the legislative rules which implement Senate Bill 88. Specifically, our concerns reside in the eligibility requirements of Rule 23 - Exemption for New Primary Care Services. According to the proposed rule, an applicant for exemption from the Certificate of Need review "must be a comprehensive community-based primary care center." It is our interpretation that nonprofit hospitals would not be considered eligible applicants under this rule.

Our belief is that the legislative intent of S.B. 88 was to expand primary care services to underserved areas in the most cost efficient manner. In areas operating without a primary care center, nonprofit hospitals would in all probability be able to offer primary care services more cost effectively than through the formation of new primary care centers. We urge you to include nonprofit hospitals as eligible applicants to avoid perpetuating the restriction of primary care services in medically underserved areas.

Again, Weirton Medical Center appreciates the opportunity to comment on these proposed rules. Should you require any additional information, please feel free to contact me at 797-6566.

Sincerely,

John C. Frankovitch
Director of Reimbursement

cc: Thomas Moore
Robert J. Turner
Robert Whitler, WVHA



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Gaston Caperton
Governor

F A X T R A N S M I T T A L

FAX (304) 558-2183
Telephone (304) 558-5388 (ext. 1175)

DATE: August 24, 1992
TO: Health Care Cost Review Authority
ATTENTION: Dave Formash
FAX NO.: 558 - 7001
Number of Pages (including this page): 3
FROM: West Virginia Bureau of Public Health
NAME: Charles Dawkins
DIVISION: Primary Care and Recruitment DEPT. CODE: 0008
TELEPHONE: (304) 558-4007

COMMENTS: My comments are hand-written
in the margin.

1411 Virginia Street, East
Charleston, West Virginia 25301-3013

W



600 D Street, Second Level
South Charleston, West Virginia 25303
(304) 744-9842 FAX (304) 744-9889

August 13, 1992

Marianne K. Stonestreet
Health Care Cost Review Authority
100 Dee Drive, Suite 201
Charleston, West Virginia 25311-1697

Dear Marianne:

The West Virginia Hospital Association, on behalf of its 65 member hospitals, appreciates the opportunity to comment on the following three legislative rules which implement S.B. 88.

Rule 23 - Exemption for New Primary Care Services

The West Virginia Hospital Association supports exemption from Certificate of Need for the development of new primary care services in underserved areas. During the 1992 legislative session, we supported this exemption as long as hospitals and other health care providers were treated equally. Article 2D, Section 5, clearly states that nonprofit hospitals with community boards are eligible for the exemption:

16-2D-4 Exemptions from Certificate of Need Program

(5) 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 organizations with a community board, that provides or will provide primary care services to people without regard to ability to pay.

The proposed rule does not fairly interpret the legislative intent of S.B. 88. According to the proposed rule, an applicant for exemption from Certificate of Need review "must be a comprehensive community-based primary care center."

I worked with legislators on this provision and their intent was to expand primary care services to populations in the most efficient method and not to necessarily expand primary care centers. They certainly considered nonprofit hospitals to be community-based nonprofit organizations.

We would strongly urge you and the Legislative Rule-Making Review Committee to include nonprofit hospitals as eligible applicants.

We would also request that the definition of community board be modified to conform with West Virginia's board composition law. The definition in the proposed rule states that:

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

HEALTH CARE COST REVIEW AUTHORITY
1992 AUG 16 11 53 AM '92

Article 2D, Section 5, makes no reference to hospitals.
I can't find anything in the code that suggests that legislators' intent includes hospitals.
again, no one that legislators need to be included

Marianne K. Stonestreet
August 13, 1992
Page 2

In order to qualify as a federally qualified health center (FQHC), the board needs to be at least 5 percent consumer representation. Federally funded Section 330 primary care centers automatically qualify as FQHCs. Hospitals, on the other hand, are required by law to have 40 percent consumer representation. Again, it looks like a conscious effort has been made to disqualify hospitals from taking advantage of this exemption.

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We believe that this rule fairly reflects legislative interest.

The West Virginia Hospital Association sincerely appreciates the opportunity to provide these comments. I will be at the public hearing on August 31st and would be glad to answer any questions at that time or any time between now and then.

Sincerely,



Robert D. Whitler
Vice President
Public Policy Development

RDW/tlm

c: Larry Fizer

SMH SUMMERSVILLE MEMORIAL HOSPITAL

400 Fairview Heights Road • Summersville, West Virginia 26651 • 872-2891

August 17, 1992

Marianne K. Stonestreet
Health Care Cost Review Authority
100 Dee Drive, Suite 201
Charleston, WV 25311-1697

Dear Ms. Stonestreet:

I have reviewed the proposed legislative rules necessary to implement S.B. 88 and I have also received comments from the West Virginia Hospital Association on these same legislative rules. I agree wholeheartedly with the comments presented by Mr. Whitler of the Hospital Association and I would like to take this opportunity to expound upon a couple of points.

Hospitals must be given the opportunity to open primary care centers on equal footing with others. There is a disturbing trend in our service area. More and more, primary care providers are choosing not to practice inpatient, i.e. hospital, medicine. This trend is having a serious impact upon continuity of care and is forcing other physicians, who must care for patients of the primary care physicians without admitting privileges, to give serious consideration to discontinuing their inpatient practice of medicine as well.

Collaboration with rural hospitals must be shown and I would suggest that the primary care centers asking for exemption must have physicians who practice inpatient medicine at a nearby hospital. I would be glad to discuss this point with you to suggest certain language if you so desire.

Thank you for this opportunity to comment.

Sincerely,


Gregory D. Johnson
Administrator

cc: Bob Whitler
Larry Fizer

WV HEALTH CARE COST REVIEW AUTHORITY
MEETING REGISTRATION

Date of Meeting: August 31, 1992, 10:00 a.m.

Public Hearing re: Proposed Rule, "Exemption for New Primary Care Services"

	Individual's Name	Name of Organization	Do you wish to speak? Y or N
1	Bob Whitley	LVHA	Yes
2	M. Smart	WVBPCH	N
3	James E. Lefe	WVBPCH	N
4	Charles [unclear]	"	N
5	Al Waller	HLPC	N
6			
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