

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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FILED
JUN 24 1993
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 65

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

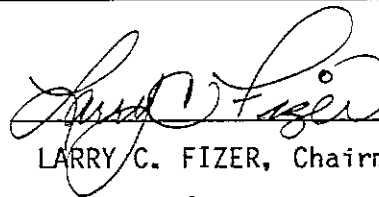
TITLE OF RULE BEING PROPOSED: Exemption For New Primary Care Services

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) H.B. 100

SECTION 64-5-3(v), PASSED ON May 26, 1993

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: June 24, 1993



LARRY C. FIZER, Chairman

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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 - June 24, 1993.

1.4. Effective Date - June 24, 1993.

§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.

SENATE BILL NO. 200

(By Senator Manchin)

1 [Introduced March 1, 1993; referred to the
2 Committee on Health and Human Resources; and
3 then to the Committee on the Judiciary.
4
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8
9

10 A BILL to amend and reenact section three, article five, chapter
11 sixty-four of the code of West Virginia, one thousand nine
12 hundred thirty-one, as amended, relating to authorizing the
13 health care cost review authority to promulgate legislative
14 rules relating to the exemption for new primary care
15 services.

16 Be it enacted by the Legislature of West Virginia:

17 That section three, article five, chapter sixty-four of the
18 code of West Virginia, one thousand nine hundred thirty-one, as
19 amended, be amended and reenacted, to read as follows:

20 ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN
21 RESOURCES TO PROMULGATE LEGISLATIVE RULES.

22 §64-5-3. Health care cost review authority.

23 (a) The legislative rules filed in the state register on the
24 twenty-first day of October, one thousand nine hundred

1 eighty-three, relating to the health care cost review authority
2 (limitation on hospital gross patient revenue), are authorized.

3 (b) The legislative rules filed in the state register on the
4 nineteenth day of December, one thousand nine hundred
5 eighty-three, relating to the health care cost review authority
6 (freeze on hospital rates and granting temporary rate increases),
7 are authorized.

8 (c) The legislative rules filed in the state register on the
9 twenty-first day of December, one thousand nine hundred
10 eighty-four, relating to the health care cost review authority
11 (implementation of the utilization review and quality assurance
12 program), are authorized.

13 (d) The legislative rules filed in the state register on the
14 fifteenth day of August, one thousand nine hundred eighty-four,
15 relating to the health care cost review authority (hospital cost
16 containment methodology), are authorized.

17 (e) The legislative rules filed in the state register on the
18 twenty-fifth day of November, one thousand nine hundred
19 eighty-five, modified by the West Virginia health care cost
20 review authority to meet the objections of the legislative
21 rule-making review committee and refiled in the state register on
22 the twenty-eighth day of January, one thousand nine hundred
23 eighty-six, relating to the West Virginia health care cost review
24 authority (interim standards for lithotripsy services), are
25 authorized.

1 (f) The legislative rules filed in the state register on the
2 third day of September, one thousand nine hundred eighty-seven,
3 modified by the West Virginia health care cost review authority
4 to meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the twenty-seventh
6 day of January, one thousand nine hundred eighty-eight, relating
7 to the West Virginia health care cost review authority
8 (exemptions from certificate of need review), are authorized.

9 (g) The legislative rules filed in the state register on the
10 nineteenth day of September, one thousand nine hundred
11 eighty-eight, modified by the health care cost review authority
12 to meet the objections of the legislative rule-making review
13 committee and refiled in the state register on the twenty-first
14 day of February, one thousand nine hundred eighty-nine, relating
15 to the health care cost review authority (financial disclosure),
16 are authorized.

17 (h) The legislative rules filed in the state register on the
18 fourteenth day of August, one thousand nine hundred eighty-nine,
19 modified by the West Virginia health care cost review authority
20 to meet the objections of the legislative rule-making review
21 committee and refiled in the state register on the fifth day of
22 December, one thousand nine hundred eighty-nine, relating to the
23 West Virginia health care cost review authority (expedited review
24 for rate changes), are authorized with the amendments set forth
25 below:

1 On page 5, Section 4.1, after the words: "affected by the
2 increase." by inserting the following language: "The hospital
3 shall also reconcile any excesses in gross revenue, gross patient
4 revenue, gross inpatient revenue or charges per discharge.
5 Within fifteen days of submission the Authority shall inform the
6 hospital if it accepts the justification for excesses provided by
7 the hospital."

8 And,

9 On page 6, section 4.2, after the words "the excess in gross
10 outpatient revenue" by striking the period and inserting the
11 following:

12 "or if any excesses in the above categories (1 through 4)
13 have been sufficiently justified to the Authority as required in
14 Section 4.1 of this rule."

15 (i) The legislative rules filed in the state register on the
16 eleventh day of September, one thousand nine hundred eighty-nine,
17 modified by the West Virginia health care cost review authority
18 to meet the objections of the legislative rule-making review
19 committee and refiled in the state register on the fifth day of
20 December, one thousand nine hundred eighty-nine, relating to the
21 West Virginia health care cost review authority (exemption for
22 conversion of acute care beds to skilled nursing care beds), are
23 authorized.

24 (j) The legislative rules filed in the state register on the
25 thirtieth day of July, one thousand nine hundred ninety, modified

1 by the health care cost review authority to meet the objections
2 of the legislative rule-making review committee and refiled in
3 the state register on the twenty-fifth day of September, one
4 thousand nine hundred ninety, relating to the health care cost
5 review authority (exemption for shared services), are authorized.

6 (k) The legislative rules filed in the state register on the
7 thirty-first day of July, one thousand nine hundred ninety,
8 modified by the health care cost review authority to meet the
9 objections of the legislative rule-making review committee and
10 refiled in the state register on the twenty-fifth day of
11 September, one thousand nine hundred ninety, relating to the
12 health care cost review authority (health services offered by
13 health professionals), are authorized.

14 (l) The legislative rules filed in the state register on the
15 eleventh day of September, one thousand nine hundred ninety,
16 modified by the West Virginia health care cost review authority
17 to meet the objections of the legislative rule-making review
18 committee and refiled in the state register on the twenty-fourth
19 day of January, one thousand nine hundred ninety-one, relating to
20 the West Virginia health care cost review authority (conversion
21 of acute care beds to one hundred skilled nursing care beds), are
22 authorized.

23 (m) The legislative rules filed in the state register on the
24 twelfth day of August, one thousand nine hundred ninety-one,
25 modified by the health care cost review authority to meet the

1 objections of the legislative rule-making review committee and
2 refiled in the state register on the eighth day of November, one
3 thousand nine hundred ninety-one, relating to the health care
4 cost review authority (health services offered by health
5 professionals), are authorized.

6 (n) The legislative rules filed in the state register on the
7 first day of May, one thousand nine hundred ninety-one, modified
8 by the health care cost review authority to meet the objections
9 of the legislative rule-making review committee and refiled in
10 the state register on the twenty-second day of July, one thousand
11 nine hundred ninety-one, relating to the health care cost review
12 authority (review for automatic rate changes), are authorized.

13 (o) The legislative rules filed in the state register on the
14 ninth day of August, one thousand nine hundred ninety-one,
15 modified by the health care cost review authority to meet the
16 objections of the legislative rule-making review committee and
17 refiled in the state register on the sixteenth day of October,
18 one thousand nine hundred ninety-one, relating to the health care
19 cost review authority (certificate of need), are authorized.

20 (p) The legislative rules filed in the state register on the
21 twelfth day of August, one thousand nine hundred ninety-one,
22 modified by the health care cost review authority to meet the
23 objections of the legislative rule-making review committee and
24 refiled in the state register on the sixteenth day of October,
25 one thousand nine hundred ninety-one, relating to the health care

1 cost review authority (exemption for shared services), are
2 authorized with the amendments set forth below:

3 On page six, subsection 4.4, after the words "Charleston
4 newspapers", by striking out the word "and" and inserting in lieu
5 thereof a comma;

6 On page six, subsection 4.4, after the words "State Register"
7 by adding the words "and a newspaper of general circulation
8 within the area of the facility.";

9 On page seven, subsection 4.5, after the words "notice in the
10 Saturday Charleston newspapers", by striking out the word "and"
11 and inserting in lieu thereof a comma;

12 On page seven, subsection 4,5, before the words "the state
13 agency shall within ten", by striking out the comma and inserting
14 the words "and a newspaper of general circulation within the area
15 of the facility";

16 And,

17 On page seven, subsection 4.5, after the words "decision in
18 the Saturday Charleston newspapers", by striking out the
19 remainder of the sentence and inserting in lieu thereof the
20 following: ", the state register and a newspaper of general
21 circulation within the area of the facility.".

22 (q) The legislative rules filed in the state register on the
23 twenty-seventh day of June, one thousand nine hundred ninety-one,
24 modified by the health care cost review authority to meet the
25 objections of the legislative rule-making review committee and

1 refiled in the state register on the twenty-third day of
2 September, one thousand nine hundred ninety-one, relating to the
3 health care cost review authority (development of life care
4 retirement centers), are authorized.

5 (r) The legislative rules filed in the state register on the
6 twenty-seventh day of June, one thousand nine hundred ninety-one,
7 modified by the health care cost review authority to meet the
8 objections of the legislative rule-making review committee and
9 refiled in the state register on the twenty-third day of
10 September, one thousand nine hundred ninety-one, relating to the
11 health care cost review authority (conversion of acute care beds
12 to skilled nursing care beds), are authorized.

13 (s) The legislative rules filed in the state register on the
14 ninth day of August, one thousand nine hundred ninety-one,
15 modified by the health care cost review authority to meet the
16 objections of the legislative rule-making review committee and
17 refiled in the state register on the tenth day of January, one
18 thousand nine hundred ninety-two, relating to the health care
19 cost review authority (financial disclosure), are authorized with
20 the amendment set forth below:

21 On page eighteen, after subsection 5.3, by adding thereto a
22 new subsection, designated subsection 5.4, to read as follows:

23 "5.4 A covered facility which is a nonprofit,
24 community-based primary care center providing primary care
25 services without regard to ability to pay which provides the

1 board with a year-end audited financial statement prepared in
2 accordance with generally accepted auditing standards and with
3 governmental auditing standards issued by the comptroller general
4 of the United States shall be considered to have complied with
5 the disclosure requirements of sections 3 and 4 of this rule."

6 (t) The legislative rules filed in the state register on the
7 eighteenth day of September, one thousand nine hundred ninety-
8 two, modified by the health care cost review authority to meet
9 the objections of the legislative rule-making review committee
10 and refiled in the state register on the twentieth day of
11 November, one thousand nine hundred ninety-two, relating to the
12 health care cost review authority (exemption for new primary care
13 services), are authorized.

14

15 NOTE: The purpose of this bill is to authorize the Health
16 Care Cost Review Authority to promulgate legislative rules
17 relating to the exemption for new primary care services.

18

19 Strike-throughs indicate language that would be stricken from
20 the present law, and underscoring indicates new language that
21 would be added.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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Deputy Secretary of State

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(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

May 28, 1993

Marianne Stonestreet
Health Care Cost Review Authority
101 Dee Drive
Suite 201
Charleston, WV 25301

HB 100 authorizing, **Title 65, Series 23, Exemption for New Primary Care Services**, passed the Legislature on **May 26, 1993**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs HB 100, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office. Authorization for your legislative rule is cited in **HB 100** section **64-5-3(v)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, PLEASE SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division