

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

RECEIVED

1992 SEP 18 PM 1:41

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**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)(6) 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: 24

TITLE OF RULE BEING PROPOSED: Exemption For Birthing Centers

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

5.40

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

RECEIVED
1992 SEP 18 PM 1:41
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**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)(6) and 8

AMENDMENT TO AN EXISTING RULE: YES NO

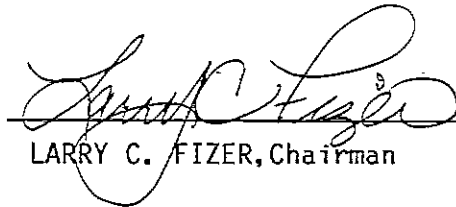
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 24

TITLE OF RULE BEING PROPOSED: Exemption For Birthing Centers

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

5.40

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

RECEIVED

1992 SEP 18 PM 1:41

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Rule Title: Exemption For Birthing Centers

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 birthing centers in areas that are underserved with respect to low-risk obstetrical 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.

Birthing center services are traditionally less expensive than obstetrical services in an acute care setting. Women who choose this alternate method of delivery will spend less for healthcare.

Date July 31, 1992

Signature of Agency Head or Authorized Representative


LARRY C. FIZER, CHAIRMAN

DATE: September 18, 1992

RECEIVED

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

1992 SEP 18 PM 1:41

FROM: Health Care Cost Review Authority

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

LEGISLATIVE RULE TITLE: Exemption For Birthing Centers

1. Authorizing statute(s) citation W. Va. Code §16-2D-4(a)(6)
and 8

2. a. Date filed in State Register with Notice of Hearing:
July 31, 1992

b. What other notice, including advertising, did you
give of the hearing?
HCCRA newsletter (circulation - approximately 1,000 - including
providers, payors and other interested persons); Charleston
newspapers.

c. Date of hearing (s): August 31, 1992

d. Attach list of persons who appeared at hearing, comments
received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved
proposed Legislative Rule following public hearing:
(be exact)

September 18, 1992

f. Name and phone number of agency person to contact
for additional information:

Marianne K. Stonestreet

General Counsel

558-7000

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.

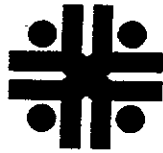
N/A

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 _____



CABELL HUNTINGTON HOSPITAL

August 28, 1992

West Virginia Health Care Cost Review Authority (HCCRA)
100 Dee Drive, Suite 201
Charleston, WV 25311

RE: Legislative Rule
Health Care Cost Review Authority
Chapter 16-2D-4(a)(6), Series 24
Exemption for Birthing Centers

Dear HCCRA:

Thank you for providing the opportunity to comment on the above referenced legislative rule. The comments made are referenced by the section numbers to which they refer.

Ref. Section 1.1

The exemption is for birthing centers providing low risk obstetrical services. It is suggested that licensure of such facilities include strict admission criteria to ensure that only low risk patients are served by birthing centers.

Ref. Section 2.2

The definition uses the terms "short-stay" and "ambulatory". It is therefore unclear how long the stay is to be for birthing center patients. What constitutes a "short stay"? One day? Two days? "Ambulatory" usually connotes discharge on the same day as the procedure. Please clarify.

Ref. Section 2.5

An eligible hospital is defined as "a nonprofit hospital with less than 100 licensed acute care beds". Why are larger hospitals excluded from eligibility for this exemption? Certain larger hospitals may want to allocate the resources necessary to initiate a birthing center in an underserved area and meet an unmet need. This definition of eligible hospital seems too restrictive.

HEALTH CARE COST REVIEW AUTHORITY
1992 AUG 31 4 14 PM '92

Page 2

Comments: Exemption for Birthing Centers

Ref. Section 2.11

The allowable distance used to define an underserved service area should take into account the location(s) of existing birthing centers and the location(s) of existing acute care obstetrics providers. Therefore, it is suggested that the definition be modified to read:

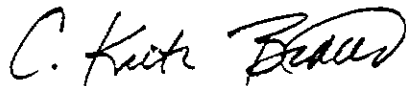
"A service area in which the proposed birthing center will be located at least the allowable distance from an existing birthing center or existing acute care obstetrics provider..."

Ref. Section 4.2

The notice of receipt of the letter of intent should be published in the HCCRA newsletter, The Health Care Cost REVIEW, as well.

Thank you again for providing the opportunity to comment on the legislative rule. Should you have any questions regarding these comments, please call.

Sincerely,



C. Keith Biddle
VP Planning and Environmental Services

cc: W. Don Smith, II
President

Good morning. My name is Sally Tom and I am a certified nurse-midwife licensed to practice in West Virginia.

I appreciate that those who have drafted these regulations have done so with the intention of lifting as much regulatory burden as possible off of rural hospitals and primary care centers. In reviewing these proposed regulations, I have tried to put myself in the shoes of an administrator who is considering establishing a birth center. I find that the regulations, as drafted, lack clarity and would impose significant problems on the rural hospitals and primary care centers.

I would like to make an opening observation about birth services and then I will discuss each of these problem areas as they appear sequentially in the draft.

Freestanding birth centers have been repeatedly shown to be safe, cost effective facilities for the conduct of normal labors and deliveries. Women and their families seek birth center services not only because they are safe and often less expensive, but also because labor and birth in these centers differ in important ways from labor and birth in hospitals. These differences mean that hospital obstetrical care and birth center services are not the same services and should not be equated with one another when measuring availability of care. Most importantly, the existence of a hospital that provides obstetrical services should not preclude the existence of a freestanding birth center. While it appears to be that these regulations address the establishment of freestanding birth centers, it should be made clear that in fact they do. Otherwise, hospitals could effectively block the establishment of freestanding birth centers simply by converting some labor beds to labor and delivery beds and by putting a sign on the door that says "birth center." I would not want to discourage hospitals from offering family centered, non-interventionist obstetrical services, but would not want to see the existence of such hospital services act to block the establishment of freestanding birth centers.

Paragraph 3.7 outlines the definition of a service area for a comprehensive community based primary care center. The draft regulations make no mention of an analogous definition for rural nonprofit hospitals. This lack of definition leaves to a rural hospital the possibility of claiming a service area large enough to block other organizations from bringing health care services to areas of scarcity. I recommend that the Office of Community and Rural Health Services be empowered to define, and limit, the service area for birth services for rural hospitals.

REC'D
MAY 31 1977
COMMUNITY AND RURAL HEALTH SERVICES
STATE DEPARTMENT OF HEALTH

Paragraph 3.9 raises many concerns. While on its face, the concept of an allowable distance seems rational, in fact this concept may present significant obstacles to the process of choosing the best site for a birth center. Choosing a site for a birth center involves making a safe compromise between easy access to the birth center and easy access to the center's referral hospital. It seems that this part of the regulations is intended to protect existing birth centers from competition that might damage them. If that is the case, the regulations should require the applicants to discuss the impact their center might have on other centers and allow the Health Care Cost Review Authority to decide on the basis of market impact whether the applicant should be exempt from the certificate of need process.

Paragraphs 3.9.1, 3.9.2, 3.9.3 would create confusion and problems for people who want to offer birth center services. As written, it is impossible to know if the standard is that there should be one delivering physician or nurse-midwife, no more than one, or at least one. I assume that the intent here is to define a situation of scarcity and that it should read "No more than," and I urge you to clarify the intention in your final regulations.

Certified nurse-midwives always work in collaboration with physicians. At a minimum, the physician who collaborates with the nurse-midwife should not be counted separately in this determination of scarcity. No area that has a certified nurse-midwife could qualify under this restriction, as that area would always already have two people qualified to deliver babies.

The Bureau of Public Health recently released the Statewide Perinatal Task Force's report which contains a study done from birth certificates. This study shows that many more people are delivering babies in West Virginia than had previously been thought to be. It also shows that some people who deliver babies only do a few deliveries per year, and that some physicians are seriously overburdened. The regulations need to define the term "delivering" numerically so that applicants can easily establish scarcity of services. Scarcity could exist when one or two providers are struggling to keep up with a large number of clients, or when a physician is available to do an occasional emergency birth, but does not intend to attend births on a regular basis.

Certainly a birth center must meet state licensure requirements prior to the provision of services. Paragraph 4.3 seems to imply that the proposed facility must meet state licensure requirements in order for the Health Care Cost Review Authority to grant exemption from the certificate of need. Meeting state licensure requirements requires a significant capital and financial budget expenditure which an agency may not want to undertake until it knows that it will be exempt from certificate of need review or until it has passed the review process.

Until paragraph 64-68-6, the draft refers to "service areas". In this paragraph, however, the draft refers to "counties." Counties and service areas may, or may not, be the same geographic area. While county lines do not change, service areas change dramatically with changes in roads, reimbursement practices and availability of services. I suggest that while it may always be reasonable to require hospitals and primary care centers in the same service areas to collaborate, it may not be reasonable to require collaboration within county boundary lines.

I thank you for this opportunity to provide input into these important regulations.



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 11 10 54 AM
REF: 1

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.

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 (RPCBs). The rule creates a mechanism for a RPCB to reject its designation as an RPCB 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

WV HEALTH CARE COST REVIEW AUTHORITY
MEETING REGISTRATION

Date of Meeting: August 31, 1992, 9:30 a.m.

Public Hearing re: Proposed Rule, "Exemption for Birthing Centers"

	Individual's Name	Name of Organization	Do you wish to speak? Y or N
1	<i>Bob Whittle</i>	<i>WVHA</i>	
2	<i>George Riden</i>	<i>WUCMA</i>	<i>Y</i>
3	<i>James E. Wolfe</i>	<i>WBPH</i>	<i>N</i>
4	<i>Monica S. Sobot</i>	<i>WVBPH</i>	<i>N</i>
5	<i>Charles S. Sobot</i>	"	<i>N</i>
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			

RECEIVED

1992 SEP 18 PM 1:41

TITLE 65
WEST VIRGINIA LEGISLATIVE RULE
HEALTH CARE COST REVIEW AUTHORITY

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 24

Title: EXEMPTION FOR BIRTHING CENTERS

§65-24-1 General

1.1. Scope - This legislative rule establishes an exemption from certificate of need review for birthing centers in areas that are underserved with respect to low-risk obstetrical services.

1.2. Authority - W. Va. Code §16-2D-4(a)(6) and 8.

1.3. Filing Date - July 31, 1992.

1.4. Effective Date - _____.

§65-24-2 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.~~

2.21. Birthing Center - A short-stay ambulatory health care facility designed for low-risk births following normal uncomplicated pregnancy.

2.32. 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.

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

2.54. Eligible Hospital - A nonprofit hospital with less than 100 licensed acute care beds.

2.65. Eligible Primary Care Center - A facility which is nonprofit, has a community board, and provides

primary care services to people in its community without regard to ability to pay.

2.76. Primary Care Services - Health-related services that emphasize first contact patient care that link the patient to the full spectrum of health services, including health education, preventive services, secondary, and tertiary care. Such services may include maternal and child health programs, pediatric services, dental care, nutrition programs, adolescent care programs, women's health services, geriatric care, pharmaceutical services, lifestyle modification, wellness, and programs aimed at special community needs such as black lung and other occupational health clinics, health screening programs, and transportation services. Primary care services may be provided by physicians, nurse practitioners, physician assistants, and nurse-midwives. ~~New primary care services may include new services; new facilities and the replacement or maintenance of existing primary care services and facilities, but shall not include the acquisition, offering, or development of major medical equipment otherwise subject to review under the provisions of W. Va. Code §16-2D-4(a).~~ 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. Primary care services shall, furthermore, not include an obligation for a capital expenditure incurred by or on behalf of the facility in excess of the expenditure minimum of \$750,000.00.

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

~~2.9. Service Area - For each comprehensive community-based primary care center, the service area is the geographic area or population groups approved by the Public Health Service of the United States Department of Health and Human Services as the center's service area. If a community-based primary care center does not report its service area to the Public Health Service, the center shall obtain approval of its service area from the Office of Community and Rural Health Services, within the state Department of Health and Human Resources.~~

2.108. State Agency - Health Care Cost Review Authority.

2.119. Underserved Service Area - A service area in which the proposed birthing center will be located at least the allowable distance from an existing birthing center and in which any of the following are true:

2.119.1. Caseload - One (1) delivering physician or nurse midwife per one-hundred (100) deliveries per year.

2.119.2. Population - One (1) delivering physician or nurse midwife per ten-thousand (10,000) total population.

2.119.3. Population - One (1) delivering physician or nurse midwife per two-thousand-five-hundred (2,500) women of childbearing age.

2.9.4. A physician who works in collaboration with a certified nurse midwife shall not be counted separately in determining if an area is underserved with respect to low-risk obstetrical services.

§65-24-3 Exemption Criteria

To qualify for the exemption from certificate of need review for a birthing center the applicant must meet the following criteria:

3.1.1. The applicant must be an eligible primary care center or an eligible hospital;

3.1.2. The proposed birthing center shall be located in an underserved service area.

3.1.3. The applicant must meet all state licensure requirements prior to the provision of services.

§65-24-4 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 contained in sections 3.1., 3.2., and 3.3. This information shall include a copy of the agreement between the applicant and the hospital which agrees to accept referrals from the applicant;

4.3.2. A copy of the applicant's by-laws and a list of the members of its 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 proof as a designated 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 birthing center to other birthing centers in the region;

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

4.3.6. 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;

4.3.7. 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

4.3.8. Information with respect to the projected annual number of users and encounters to be served at the site. In instances involving an existing site that is planning to add a birthing center, actual information regarding the operating budget, users, and encounters is to be provided; and

4.3.9. The application must contain a verification signed by the chairperson of the applicant's governing board

and, if the applicant is a hospital, chief executive officer of the hospital.

4.4. Upon receipt of the application, the board may send a copy of the application to the Office of Community and Rural Health Services for its review. The Office of Community and Rural Health Services shall advise the board within thirty (30) calendar days from its receipt of the application, if the applicant proposes a location which is underserved with respect to low-risk obstetrical services; provided that 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. Upon receipt of the recommendation from the Office of Community and Rural Health Services and 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.

4.6. 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.

4.7. 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.

4.8. 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.

§65-24-5 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 is a final decision. The board shall publish notice of the decision in the Saturday Charleston newspapers and the State Register.

§65-24-6 Competing Applications

If, within thirty (30) days of one another, an eligible primary care center and an eligible hospital which are located in the same county file applications pursuant to this rule, then at least one primary care center and at least one hospital from said county shall be required to collaborate

for the provision of services at a birthing center in order to qualify for this exemption. Otherwise, if more than one application is received for this exemption for the same or overlapping underserved service areas as determined by the board, then no exemption shall be issued, and the birthing centers shall be subject to certificate of need review.

§65-24-7 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
Birthing Centers

=====
The proposed legislative rule implements certain provisions of Senate Bill 88, particularly W. Va. Code §16-2D-4(a)(6). The rule provides for an exemption from certificate of need review for birthing centers located in areas which are underserved with respect to low-risk obstetrical services.

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 Birthing Centers
DATE: September 18, 1992

=====

In response to comments received from Sally Tom, a certified nurse-midwife licensed to practice in West Virginia, an amendment to the rule was made on page 5, subsection 2.9.4. Ms. Tom states that certified nurse-midwives always work in collaboration with physicians and therefore, at a minimum the physician who collaborates with the midwife should not be counted separately in the determination of scarcity. Based upon this suggestion the amendment was made to subsection 2.9.4.

The second substantive amendment appears on page 7 of the rule, subsection 4.3.1. This amendment was made as a result of the comments received from George Rider, the Executive Director of the West Virginia State Medical Association, at the public hearing. Birthing Centers are required to be licensed and as a part of licensure, birthing centers are required to have a backup agreement with a hospital. However, for clarification it is the HCCRA's opinion that a copy of this agreement between the birthing center and the hospital must be submitted with the other information required to obtain the exemption.

Comments were also received from Cabell Huntington Hospital; however, no amendments were made to the rule as a result of these comments. The majority of CHH's comments are either not permitted by the statutory language of W. Va. Code §16-2D-4(a)(6) and/or are covered by licensing requirements. Accordingly, it is the opinion of the HCCRA that no amendment to the rule is necessary.

Memorandum to Legislative Rule-Making Review Committee
September 18, 1992
Page Two

All other amendments to the rule were for purposes of clarification and/or grammatical. Language was deleted in several instances where, in the opinion of the HCCRA it was superfluous.

MKS/jmh

COPY

BEFORE THE HEALTH CARE COST REVIEW AUTHORITY

IN RE: PUBLIC HEARING ON PROPOSED RULE,
"EXEMPTION FOR BIRTHING CENTERS"

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 9:31 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

HEALTH CARE COST REVIEW AUTHORITY
AUG 31 1992
2

PHYLLIS HAYNES EDENS

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

I N D E X

WITNESS:

STATEMENT

George Rider

3

Reporter's Certificate.....6

EXAMINER STONESTREET: This is a public hearing on Proposed Legislative Rule "Exemption for Birthing Centers," Title 65, Series No. 24.

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

My name is Marianne Stonestreet. I am the General Counsel for the Board of HCCRA. Also present today are two of the HCCRA Board Members. To my right is Mr. Robert Hatfield, and to my left is Mr. Walter Dale.

I would at this time ask if there is anyone present who cares to make a comment on this proposed rule?

MR. RIDER: (Indicating).

EXAMINER STONESTREET: Mr. Rider, do you want to come forward?

(WHEREUPON, the following statement was made.)

MR. RIDER: My name is George Rider. I am

the Executive Director of the West Virginia State Medical Association.

In reviewing rules concerning birthing centers and primary care clinics, I have found that there was a lack of any requirement for these primary care clinics to have backup support from a fixed facility in case of a problem at the time of birthing.

I would suggest that such a requirement be added to these rules, and a that a time limit be established for the distance traveled from a primary care clinic to a facility that has capability of handling a difficult birth.

I would suggest 15 to 30 minutes would be a minimum or a maximum, either way you want to say it.

That is the only comment I have concerning these rules.

EXAMINER STONESTREET: Thank you, Mr. Rider.

Is there anyone else present who cares

to make a comment on the proposed rule?

(WHEREUPON, there was no response.)

EXAMINER STONESTREET: I would note for the record that we have received several sets of written comments, and all these will be taken into consideration by the Board prior to our final filing of the Rule.

If there is nothing further, we will conclude this public hearing.

(WHEREUPON, the hearing was concluded at 9:33 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