

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #7

Do Not Mark In This Box
Filing Date

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1992 SEP 18 PM 1:37
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

Oct. 23, 1992

NOTICE OF AN EMERGENCY RULE

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 65

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

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 25

TITLE OF RULE BEING FILED AS AN EMERGENCY: Exemption For

Primary Care Hospitals

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

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

W. Va. Code §16-2D-4(g) requires the HCCRA to promulgate this rule within ninety (90) days of the effective date.

4.40

Use Additional Sheets If Necessary.


Signature
LARRY C. FIZER, Chairman

APPENDIX B

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FISCAL NOTE FOR PROPOSED RULE 1992 SEP 18 PM 1:37

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Rule Title: Exemption For Primary Care Hospitals

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:

This rule creates a mechanism for a rural primary care hospital (RPCH) to reject its designation as such with 24 months and to restore its previously staffed and operated acute care beds without obtaining a certificate of need.

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.

A small rural hospital has the ability to restore its previously staffed and operated beds which were forfeited to become a RPCH if it rejects the designation in a timely manner.

C. Economic Impact on Citizens/Public at Large.

N/A

Date July 31, 1992

Signature of Agency Head or Authorized Representative



LARRY C. FIZER, CHAIRMAN

DATE: September 18, 1992

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TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE SEP 18 PM 1:37

FROM: Health Care Cost Review Authority

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

EMERGENCY RULE TITLE: Exemption For Primary Care Hospitals

1. Date of filing: September 18, 1992
2. Statutory authority for promulgating the emergency rule: W. Va. Code §16-2D-4(g) and 8
3. Date of filing of proposed legislative rule: July 31, 1992
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
Adopts new language
5. Has the same or similar emergency rule previously been filed and expired?
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

See response to #7

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

W. Va. Code §16-2D-4(g) - ninety (90) days from effective

date (February 29, 1992)

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

See response to #7

TITLE 65
WEST VIRGINIA LEGISLATIVE RULE
HEALTH CARE COST REVIEW AUTHORITY
EMERGENCY
SERIES 25

RECEIVED
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SECRETARY OF STATE

Title: EXEMPTION FOR RURAL PRIMARY CARE HOSPITALS

§65-25-1 General

1.1. Scope - This legislative rule creates a mechanism for a rural primary care hospital (RPCH) to reject designation as a RPCH within twenty-four (24) calendar months from the date of such designation, and thereby restore its previously staffed and operated acute care beds without obtaining a certificate of need.

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

1.3. Filing Date - July 31, 1992.

1.4. Effective Date - _____.

§65-25-2 Definitions

2.1. 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.

2.2. Rural Primary Care Hospital (RPCH) - A rural primary care hospital (RPCH) is a hospital that provides inpatient services, and/or stabilization before discharge or transfer to an essential access community hospital (EACH). The RPCH has a limited number of acute care beds with an additional limitation on the number of days a patient can be considered an inpatient. RPCH's must be designated as such by the West Virginia Office of Rural Health Policy in accordance with the guidelines established in W. Va. Code §16-2D-4(g).

2.3. State Agency - Health Care Cost Review Authority.

§65-25-3 Exemption Criteria

To qualify for the exemption from certificate of need review a rural primary care hospital must meet the following criteria:

3.1. The hospital must be designated as a RPCH by the Office of Rural Health Policy.

3.2. The hospital must undergo a reduction in its licensed acute care beds as determined by the Office of Rural Health Policy.

3.3. The Office of Rural Health Policy shall notify the Health Care Cost Review Authority of the hospital's designation as a RPCH; the number of beds staffed and operated by the hospital immediately prior to designation; and the number of acute care beds certified by the Health Care Financing Administration.

3.4. The hospital must reject the designation as a RPCH within twenty-four (24) calendar months from the date of designation by the Office of Rural Health Policy by written notice to the Office of Rural Health Policy and the Health Care Cost Review Authority.

§65-25-4 Exemption Procedure

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 subsections 3.1., 3.2., 3.3., and 3.4.

4.3.2. Information regarding the number and type of beds which the applicant seeks to restore; provided that the total number of beds which the hospital proposes to license shall not exceed the number of beds which were staffed and operated by the hospital immediately prior to the hospital's designation as a RPCH.

4.3.3. The application must contain a verification signed by the chairperson of the hospital's board and the hospital's chief executive officer.

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. Upon 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 applicants, shall describe the proposal, and shall, if a hearing on the exemption has been requested, state the time, place, and date of the hearing.

4.5. 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.

4.6. 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.

4.7. 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.

§65-25-5 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.

§65-25-6 Notification By Office of Rural Health Policy

Within twenty-five (25) months from its designation of rural primary care hospitals, the Office of Rural Health Policy shall notify the board of the status of the designated hospitals including the number of licensed beds for each designated hospital.

§65-25-7 Severability

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



KEN HECHLER
Secretary of State

MARY P. RATLIFF
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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

October 23, 1992

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

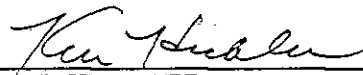
AGENCY: Health Care Cost Review Authority

RULE: New Rule, Series 25, Exemption for Primary Care Hospitals

DATE FILED AS AN EMERGENCY RULE: September 18, 1992

DECISION NO. 29-92

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



KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Oct. 23, 1992
ADMINISTRATIVE LAW DIVISION

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

DECISION

EMERGENCY RULE DECISION (ERD 29-92)

AGENCY: Health Care Cost Review Authority
RULE: New Rule, Series 25, Exemption for Primary Care
Hospitals

FILED AS AN EMERGENCY RULE: September 18, 1992

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

par. 6 The HCCRA filed this emergency rule with supporting documents with the Secretary of State September 18, 1992 and with the LRMRC September 18, 1992.

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

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

(g) This subsection applies only to hospitals designated as rural primary care hospitals by West Virginia office of rural health policy in conformance with requirements of the health care financing administration of the federal department of health and human services under Section 1920 of Public Law 101-239, Section 6000(g) of the federal Omnibus Budget Reconciliation Act of 1989.

A hospital, designated as a rural primary care hospital, in accordance with final rules issued by the health care financing administration, shall undergo a reduction in its number of licensed acute care beds as determined by the office of rural health policy.

The office of rural health policy shall notify the health care cost review authority of such designation and the number of acute care beds certified by the health care financing administration.

A rural primary care may reject this designation any time within 24 calendar months, beginning from the date of designation by the office of rural health policy. If a hospital chooses to reject this designation, it may do so upon written notification to the office of rural health policy and the health care cost review authority. If such designation is rejected by a rural primary care hospital, license restoration, not to exceed the number of acute care beds staffed and operated by the hospital immediately prior to receiving designation as a rural primary care hospital, shall be exempt from the certificate of need program review.

Within 25 months from designating rural primary care hospitals, the office of rural health policy shall notify the health care cost review authority of the status of the designated hospitals including the number of licensed beds. The state agency shall promulgate rules within 90 days of the effective date of this amendment in order to carry out the purpose of this subsection.

par. 9 It is the determination of the Secretary of State that the HCCRA has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

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

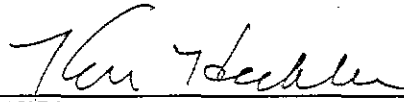
par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the HCCRA are as follows:

West Virginia Code §16-2D-4(g) requires the HCCRA to promulgate this rule within 90 days of the effective date.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "time limitation."

par. 14 This decision shall be cited as Emergency Rule Decision 29-92 or ERD 29-92 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Health Care Cost Review Authority, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
Entered _____ THIS DATE Oct 23, 1992
ADMINISTRATIVE LAW DIVISION