

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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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(g) and 8

AMENDMENT TO AN EXISTING RULE: YES NO

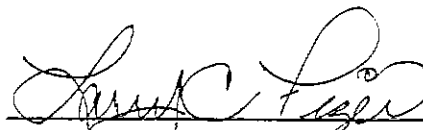
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 25

TITLE OF RULE BEING PROPOSED: Exemption For Primary Care Hospitals

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

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APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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Rule Title: Exemption For Primary Care Hospitals

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:

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

1992 SEP 18 PM 1:35

FROM: Health Care Cost Review Authority

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

LEGISLATIVE RULE TITLE: Exemption For Primary Care Hospitals

1. Authorizing statute(s) citation W. Va. Code §16-2D-4(g) 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?

Agency 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 _____

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TITLE 65
WEST VIRGINIA LEGISLATIVE RULE
HEALTH CARE COST REVIEW AUTHORITY OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
SERIES 25

1992 SEP 18 PM 1:36

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.



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."

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Marianne K. Stonestreet
August 13, 1992
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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 (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

WV HEALTH CARE COST REVIEW AUTHORITY
MEETING REGISTRATION

Date of Meeting: August 31, 1992, 9:00 a.m.

Public Hearing re: Proposed Rule, "Exemption for Rural Primary Care Hospitals"

	Individual's Name	Name of Organization	Do you wish to speak? Y or N
1	CHARLES DAWKINS	WVSPH	N
2	James E. Lape	WVBPH	N
3	Monica Smoot	WVDPH	N
4	Bob Whitten	WV HA	
5	George Rieder	WV SMA	Y
6	Al Walker	HCPC	N
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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
Primary Care Hospitals

=====
This legislative rule implements certain provisions of Senate Bill 88, effective February 29, 1992, specifically W. Va. Code §16-2D-4(g). The rule provides an exemption from certificate of need review for small rural hospitals to restore previously staffed and operated beds if they timely reject their designation as rural primary care hospitals (RPCHS).

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 Primary Care Hospitals
DATE: September 18, 1992

=====

One comment was received from the West Virginia Hospital Association in support of the rule. No other comments were received and no one testified at the public hearing. No amendments were made to the rule.

MKS/jmh

ORIGINAL

BEFORE THE HEALTH CARE COST REVIEW AUTHORITY

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

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 9:01 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
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10:01 AM

PHYLLIS HAYNES EDENS

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

EXAMINER STONESTREET: This is a public hearing on Proposed Rule Title No. 65, Series No. 25, and then the title of the rule is "Exemption for Primary Care Hospitals."

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

I would note for the record that we have received no written comments on this proposed rule, and I would ask at this time if there is anyone present who cares to make an oral statement concerning this rule?

(WHEREUPON, there was no response.)

EXAMINER STONESTREET: There being none, we will conclude the hearing.

(WHEREUPON, the hearing was concluded at 9:02 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