

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900
E-Mail WVSOS@Secretary.State.WV.US



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

WILLIAM H. HARRINGTON
Chief of Staff

CATHERINE FREROTTE
Executive Assistant

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

December 18, 1998

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: WEST VIRGINIA HEALTH CARE AUTHORITY

RULE: NEW RULE, SERIES 26, BENCHMARKING & DISCOUNT CONTRACT
RULE

DATE FILED AS AN EMERGENCY AMENDMENT: December 18, 1998

DATE FIRST FILED AS AN EMERGENCY RULE: OCTOBER 28, 1998

DECISION NO. 20-98

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

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER
Secretary of State

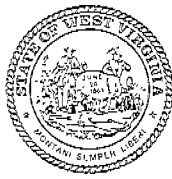
FILED IN THE OFFICE OF
THE SECRETARY OF STATE
DATE Dec: 18, 1998
ADMINISTRATIVE LAW DIVISION

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EMERGENCY RULE DECISION
(ERD 20-98)

AGENCY: WEST VIRGINIA HEALTH CARE AUTHORITY
RULE: NEW RULE, SERIES 26, BENCHMARKING & DISCOUNT CONTRACT RULE

DATE FILED AS AN EMERGENCY AMENDMENT: DECEMBER 18, 1998
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- par. 1 The West Virginia Health Care Authority (HCA) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-15a 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-3-15a].
- 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 forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The HCA filed this emergency rule with supporting documents with the Secretary

of State October 2, 1998 and with the LRMRC October 2, 1998.

par. 7 It is the determination of the Secretary of State that the HCA 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 §16-29B-20(a)(2) reads in part:

The board may define by rule what constitutes "cost" in subparagraphs (i) and (ii) of this paragraph; "purchaser" in subparagraph (iii) of this paragraph; and "economic benefit" in subparagraph (iv) of this paragraph. Any rules promulgated pursuant to this subsection may be filed as emergency rules.

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

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

(f) 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 HCA are as follows:

This proposed new legislative rule proposes an alternative rate setting system and a new method to review discount contracts. SB 458 which was passed by the legislature in 1997, directs HCA to develop this rule and to file it as an emergency rule.

The new rate setting method establishes a benchmarking system for acute care hospitals in WV. This system streamlines the rate setting process requiring less time & documentation for hospitals filing rate applications, thus reducing costs for hospitals.

The discount contract section allows more liberal filing times for the approval of contracts. It also defines "cost" as required by W. Va. Code §16-29B-20.

par. 13 It is the determination of the Secretary of State that although it has taken HCA two years after the Legislature mandated that this rule be promulgated, this proposal qualifies under the definition of an emergency because of §29A-3-15(a)(1) and as defined in §29A-3-15(f). . . "mandated by the Legislature."

par. 14

This decision shall be cited as Emergency Rule Decision 20-98 or ERD 20-98 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Health Care 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

THIS DATE Dec 18, 1998
ADMINISTRATIVE LAW DIVISION

Entered