

AUGUST

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Sunday, August 15, 1999
12 to 2 p.m.
Senate Finance Committee Room M-451

1. **Approval of Minutes** - Meeting of July 11, 1999
2. **Review of Legislative Rules:**
 - a. **West Virginia Health Care Authority**
Certificate of Need Rule, 65CSR7
 - b. **West Virginia Health Care Authority**
Health Services Offered by Health Professionals, 65CSR17
 - c. **Office of Air Quality**
To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers, 45CSR2
 - d. **Office of Air Quality**
To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants, 45CSR3
 - e. **Office of Air Quality**
Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60, 45CSR16
 - f. **Office of Air Quality**
To Prevent and Control Particulate Air Pollution from Direct Meat-Firing Devices, 45CSR18
3. **Other Business**

Sunday, August 15, 1999

12:00 p.m. - 2:00 p.m.

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Earl Ray Tomblin
ex officio nonvoting member

Robert "Bob" Kiss
ex officio nonvoting member

Senate

House

Ross, Chairman
Anderson, Vice Chairman
Schoonover Absent
Snyder
Unger
Minear

Hunt, Chairman
Linch, Vice Chairman
Compton
Jenkins
Faircloth
Riggs

The meeting was called to order by Mr. Ross, Co-Chairman.

The minutes of the July 11, 1999, meeting were approved.

Debra Graham, Committee Counsel, reviewed her abstract on the rule proposed by the *West Virginia Health Care Authority-Certificate of Need Rule, 65CSR7*. Jim Thomas, Counsel for the West Virginia Hospital Association; Bob Coffield, Counsel for the Health Care Authority; and Amy Tolliver, Government Specialist for the West Virginia Medical Association, addressed the Committee and responded to questions. George Carenbauer, from the United Hospital Center, distributed written comments to the Committee members.

Mr. Hunt moved that the proposed rule lie over until the Committee's next meeting. The motion was adopted.

Ms. Graham explained the rule proposed by the *West Virginia Health Care Authority-Health Services Offered by Health Professionals, 65CSR17*. Mr. Thomas and Mr. Coffield addressed the Committee and responded to questions.

Mr. Hunt moved that the proposed rule lie over until the Committee's next meeting. The motion was adopted.

Joseph Altizer, Associate Counsel, reviewed his abstract on the rule proposed by the *Office of Air Quality-To Prevent and Control Particulate Air Pollution from Combustion of Fuel in Indirect Heat Exchangers, 45CSR2*, and stated that the Office of Air Quality has agreed to technical modifications.

Mr. Hunt moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Altizer explained the rule proposed by the *Office of Air Quality-To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants, 45CSR3*, and stated that the Office of Air Quality has agreed to technical modifications.

Mr. Hunt moved that the proposed rule be approved as modified. The motion was adopted.

Joseph Altizer, Associate Counsel, reviewed his abstract on the rule proposed by the *Office of Air Quality-Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60, 45CSR16*.

Mr. Hunt moved that the proposed rule be approved. The motion was adopted.

Mr. Altizer explained the rule proposed by the *Office of Air Quality-To Prevent and Control Particulate Air Pollution from Direct Meat-Firing Devices, 45CSR18*.

Mr. Hunt moved that the proposed rule be approved. The motion was adopted.

The meeting was adjourned.

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Sunday, August 15, 1999
12 to 2 p.m.
Senate Finance Committee Room M-451

1. **Approval of Minutes** - Meeting of July 11, 1999

2. **Review of Legislative Rules:**

Laid over ✓ a. **West Virginia Health Care Authority**
Certificate of Need Rule, 65CSR7

til next meeting

Laid over ✓ b. **West Virginia Health Care Authority**
Health Services Offered by Health Professionals, 65CSR17

til next meeting

Approved ✓ as modified **Office of Air Quality**
To Prevent and Control Particulate Air Pollution from
Combustion of Fuel in Indirect Heat Exchangers, 45CSR2

Approved ✓ as modified **Office of Air Quality**
To Prevent and Control Air Pollution from the Operation of
Hot Mix Asphalt Plants, 45CSR3

Approved ✓ **Office of Air Quality**
Standards of Performance for New Stationary Sources Pursuant
to 40 CFR Part 60, 45CSR16

Approved ✓ **Office of Air Quality**
To Prevent and Control Particulate Air Pollution from Direct
Meat-Firing Devices, 45CSR18

3. **Other Business**

12:00 - 2:00 p.m.

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Senate Finance Room

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

Senate

✓ Ross, Chair
✓ Anderson, Vice Chair
Schoonover
✓ Snyder
✓ Unger
✓ Minear

House

✓ Hunt, Chair
✓ Linch, Vice Chair
Compton
✓ Jenkins
✓ Faircloth
✓ Riggs

Minutes approved

HCA - CON Rule

Jim Thomas, Counsel, WV Hosp Assn addressed the C
and responded to q's

Diagnostic Svcs singled out for special treatment -
\$2mil threshold - disagree.

§ 8.1, 11.4, 16.3 - new limits on applicants which are
unfair and cut into due process - applicant cannot
submit evidence after applic. has been filed.

§ 2.14 def of private off practice - no def in current
law

Tie CON + Rate Review - applies only to hosps.

Expedited process should be on an exemption basis

Bob Coffield, Assoc Counsel, HCA - responded to ques.

"Diagnostic Services" changed to mirror Series 17.

Felt needed threshold

§ 8.1 - made change to keep process from dragging.

Def - Private off practice

Expedited - procedure

Amy Tolliver - Medical Assn (Govt Specialist) ans a.
stand back and allow HA E ~~HA~~ HCA work
things out

Hunt George Cavenbauer dist written comments
lay over til Sept.

HCA - Health Services

Jim Thomas addressed C & responded to Q.

Object to raising diagnostic centers from \$300,000 →
\$2 mil

Object to removing CTs from list

Bob Baffeld

OAQ - Indirect Heat Exchangers

Joe explained - has tech mods

Approve as mod

Hunt
adopted

OAQ - Asphalt

Joe explained - has tech mods

Approve as mod

Hunt
adopted

OAQ - New Stationary

Joe explained

Approve

Hunt
adopted

OAQ - Direct Heat Firing

Joe explained

Approve

Hunt

AUGUST INTERIM SCHEDULE
Legislative Interim Meetings
August 15, 16, and 17, 1999

Sunday, August 15, 1999

12:00 - 2:00 p.m.

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

Senate

Ross, Chair	<u>✓</u>
Anderson, Vice Chair	<u>✓</u>
Schoonover	<u> </u>
Snyder	<u>✓</u>
Unger	<u>✓</u>
Miner	<u>✓</u>

House

Hunt, Chair	<u>✓</u>
Linch, Vice Chair	<u>✓</u>
Compton	<u>✓</u>
Jenkins	<u>✓</u>
Faircloth	<u>✓</u>
Riggs	<u>✓</u>

I certify that the attendance as noted above
is correct.



Staff Person

Debra

COMMENTS BY UNITED HOSPITAL CENTER
TO
PROPOSED LEGISLATIVE RULES

Before the Legislative Rulemaking Review Committee – August 15, 1999

TITLE 65, Series 7
Certificate of Need Rule

TITLE 65, SERIES 17
Health Services Offered by Health Professionals

The United Hospital Center ("UHC") offers the following comments to the proposed legislative rules promulgated by the West Virginia Health Care Authority to amend Title 65, Code of State Regulations, Series 7, Certificate of Need Rule, and to amend Title 65, Series 17, Health Services Offered by Health Professionals.

UHC is a not-for-profit community hospital located in Clarksburg, West Virginia, with 373 licensed beds, and is a part of the West Virginia United Health System. It is a major provider of basic health care to the citizens of north central West Virginia, and offers essential services, including those to many who are unable to pay. Its continued viability is essential for citizens in the area to have access to quality health care services.

UHC also has several policy concerns with these proposed rules, because of the profound impact they will have on the ability to provide our citizens with access to health care. UHC endorses the comments and proposed amendments to the rules submitted by the West Virginia Hospital Association, but also wants to offer the perspective of what implementation of the rules would mean to our facility and the people we serve.

The proposed rules have been promulgated ostensibly to comply with Senate Bill 492, enacted by the Legislature during the 1999 regular session. That legislation, in turn, was based largely on the recommendations of a Certificate of Need Study conducted by the Authority pursuant to a previous legislative mandate. The Study's recommendations were carefully developed by a Task Force consisting of health care providers of various kinds, and representatives of government, business and consumers, and were issued in September 1998. Nonetheless, both proposed rules go far beyond the letter and intent of Senate Bill 492 and the underlying Study.

The most significant impact of the proposed rules that UHC wishes to address is that the effect of the proposed rules is to create an uneven playing field by which diagnostic services could be offered by physicians and others without CON review, but identical services offered by hospitals and related organizations would be subject to review. This phenomenon was not required, or even anticipated by either S.B. 492 or the CON Study, and results from the inter-relationship of following provisions of the proposed rules:

- 65-7-2.8: Definition of "diagnostic services"
- 65-7-2.14: Definition of "private office practice"
- 65-7-15.1.a: Exemption from CON review of a "private office practice"
- 65-7-28.1 and 28.1.b: Addition of certain health services offered by a health care facility, including diagnostic services
- 65-17-2.1: Increasing the threshold from \$300,000 to \$2 million for a diagnostic center
- 65-17-3.2 and 3.39: Establishing that the cost associated with a diagnostic center is an element in determining its reviewability
- 65-17-3.3.1: Eliminating computerized tomography (CT) as a reviewable item when offered, developed or acquired by health professionals

The net effect of these provisions is that without revision, the proposed rules will have a dramatic adverse effect on hospital revenues, will increase health care costs and will cause duplication of services. They will adversely affect the ability of community hospitals to survive long term and to continue to provide adequate care for the citizens of their respective communities, by forcing rate increases and a diminished capacity to provide indigent and uncompensated care.

One of the principal missions of the HCA is to prevent unnecessary duplication of services in order to curtail the increased cost of health care services. The proposed legislative rules will have the opposite effect.

While, with the exception of diagnostic centers, Magnetic Resonance Imaging ("MRI") remains subject to review under the proposed rules, Ohio's history with MRIs since their deregulation in March 1996 for urban areas and May, 1997 for rural areas is instructive, with increases of 39 and 15 MRIs - a total of 55 - since those respective deregulation dates. To assume that similar duplication of diagnostic services will not now occur in West Virginia is naive and unrealistic. It is self-evident that an increased supply in diagnostic services will result in a smaller demand for those services to each current provider, leaving the management of the current providers such as UHC no option but to try and replace the revenue lost as a result of the decreased demand, by raising its chargeable rates or reducing costs, which will lead to reductions in the quality of care provided, or both.

The proposed rules will allow entrepreneurial partnerships between doctors and venture capitalists to arise and establish lucrative diagnostic centers offering diagnostic services for private payors, without competition from hospitals or services for public employees or the indigent.

Under the rules as drafted, one can expect "diagnostic centers" to spring up with MRI, ultrasound, C/T scanners and nuclear cameras - all available for well under \$2 million - and provide such services from 8 to 5, Monday through Friday, with a primary focus on lucrative insurance payors. Experience shows that such "cherry picking" operations are likely not to accept government pay patients, or provide indigent care, leaving the already strapped hospitals to continue to provide care to those groups. Under the proposed rules, all this would be accomplished without review by the state or consideration of the necessity-for such services in the service area.

The proposed rules promulgated by HCA in 65 C.S.R. 17 do not incorporate the exemptions detailed in the recommendations from the CON Study, which were to be incorporated into the proposed rules promulgated by the agency pursuant to S. B. 492. Rather, contrary to recommendations of the CON Study, HCA's proposed rules have inexplicably exempted from those services subject to review for physician practices only, CT scanners - a diagnostic service - despite the Study's specific recommendations that diagnostic services be subject to review regardless of cost and despite the fact that recommendations to exempt those services from review were expressly rejected by the subcommittee when it formulated its report. (See Recommended List of Reviewable Services at page 14 of the Study.)

Further contrary to the Study's recommendations to make diagnostic services reviewable regardless of cost (page 14), HCA has promulgated rules under Section 17 that would exempt diagnostic centers from review under the physician practices provisions unless the total cost of the diagnostic equipment and services offered are in excess of two million dollars, despite the subcommittee's the inclusion of diagnostic services on the Study's Recommended List of Reviewable Services.

The clear effect of the proposed rules as promulgated in 65 C.S.R. 17 is to create a situation whereby physicians' practices and groups of physicians could provide diagnostic services and establish diagnostic centers offering new services or services already available in an area without CON review or rate review, thereby defeating the very purpose of the statute, which is to contain health care costs and to provide access to health care for West Virginia citizens regardless of ability to pay. In addition to creating an unfair competitive advantage for physicians and diagnostic centers by largely exempting them from review while still subjecting hospitals to review of any services they might attempt to offer to compete for the market share that the new players in the diagnostics field will inevitably draw, the proposed rules will allow those new players to reduce the likelihood that hospitals will even be able to secure CONs for services they need and want to offer, but will not be able to show need because of entrepreneurial offerings that are secured without review.

The-effect of the proposed rules will be to create duplication, remove revenue from hospitals, and increase cost to patients in West Virginia.

It is not an understatement to say that the revenue derived from diagnostic services at UHC is in large part the lifeblood of the hospital. In fact, the contribution margin of diagnostic services at UHC represents UHC's entire operating margin.

Assuming that a loss of 50% of the volume of UHC diagnostic services results from the anticipated proliferation of diagnostic services available through physician offices and diagnostic centers, the estimated effect on UHC alone would be to remove \$4,308,055 annually of net contribution margin revenue that is currently being generated through the provision of diagnostic services. That figure is well in excess of half of UHC's total operating margin. A reduction of that size would require a 24.43% overall rate increase for the hospital to make up for that lost contribution margin. Should the anticipated revenue loss differ from the estimated 50% figure, a rate increase of approximately 5% would be required to recover a 10% increment of lost contribution margin. In light of the minimal rate increases that have been granted in the past, such an expectation is unrealistic.

The foregoing effect is brought into sharp focus when one considers that UHC historically provides uncompensated and indigent care that is between 7 and 8 percent of the total care provided when care is measured by the value of the services provided. No hospital can continue to provide uncompensated care at anywhere near that level in the face of the foregoing anticipated revenue losses.

Further, when the effects of the federal Balanced Budget Act are taken into consideration, the adverse effects of the proposed legislative rules on the long-term viability of the hospital and the services it provides to the community only compound the difficulty that community hospitals are likely to experience because of the federal Balanced Budget Act's negative impact on revenues. In order for hospitals like ours to survive, either rates for the services that remain will have to rise dramatically or the amount of uncompensated care provided to the community must be reduced, or both.

The proposed rules may diminish quality of care for the selected services.

Another effect of the proposed rules in permitting certain freestanding diagnostic services to be developed is a potential diminution of the quality of care. It is questionable whether the quality of delivery of services can be maintained when services are delivered by doctors without the support of specialists currently either employed by or contracted with West Virginia's hospitals. While we do not suggest that the physicians practicing in the various specialties are not capable of reading results of diagnostic tests, unless the physician offering a diagnostic service is a radiologist or has at his or her disposal the services of a radiologist, the level of service that can be provided to the patient will inevitably suffer.

Conclusion

Neither Senate Bill 492 nor the Certificate of Need Study was designed to create an uneven playing field by which certain services could be offered by freestanding operations without CON review, while the same services would be subject to such review if offered by hospitals.

Based on the intent of the Legislature and the Task Force which conducted the CON Study, the rules as proposed should be amended. In enacting Senate Bill 492, the Legislature did not change the language in West Virginia Code § 16-2D-4(a)(1), relating to the reviewability of services offered by a private office practice. Nor did the Task Force which conducted the CON Study for the Health Care Authority recommend a change in the playing field. In effect, the agency is attempting in the proposed rule to supersede the appeal in its recent decision in the Community Medical Associates matter, which is scheduled for oral argument on October 21, 1999.

Of greater consequence, however, is the drastic effect that implementation of the rules as proposed will have on community hospitals such as UHC, and we respectfully request that the proposed rules be amended to comport with Senate Bill 492, the recommendations of the CON Study, and the fundamental purpose of Articles 2D and 29B of Chapter 16 of the West Virginia Code, to ensure cost-effective high quality health care services to the people of our state.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

CASTO
Deputy Secretary of State

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help we can get)

FOR IMMEDIATE RELEASE

CONTACT: Judy Cooper
(304) 558-6000

**SECRETARY OF STATE DISAPPROVES
HEALTH CARE AUTHORITY EMERGENCY RULES**

Emergency rules filed by the West Virginia Health Care Authority relating to the certificate of need law and health services offered by health professionals were disapproved today by Secretary of State Ken Hechler.

"This is the most difficult decision that I have ever been confronted to make during the entire 15 years I have served as Secretary of State. The conclusion could easily have gone either way, and only a ver small weight has tipped the scale," Hechler said.

The rules in question were filed by the Health Care Authority on June 30, 1999. Subsequent to the filing the secretary received numerous comments questioning the agency's authority to promulgate the rules as emergency rules as well as objections to the changes in the rules. As a result of these comments the secretary scheduled a meeting with the agency and interested parties to make further investigation of the issues involved in his review of the proposed rules.

Based on the evidence presented in the meeting as well as a review of the proposed rules, state law and written arguments submitted by the agency and interested parties, the secretary found that the agency had exceeded the scope of its authority by promulgating rules which went beyond the legislature's emergency rule mandate, and that the agency had not quite proven the existence of an emergency with respect to the additional changes. In rejecting the rules the secretary stated "These rules presented complicated legal issues over the extent of the agency's statutory authority, and were not disapproved because I disagreed with the agency's policies or the substance of the rules."

Any questions or comments in regard to this matter may be directed to Judy Cooper in the Secretary of State's office.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

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August 9, 1999

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: W. Va. Health Care Authority

RULE: Amendments, Series 17, Health Services Offered by Health Professionals

DATE FILED AS AN EMERGENCY RULE: June 30, 1999

DECISION NO. 12-99

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



KEN HECHLER
Secretary of State

OFFICE
AUG 11 4 03 PM '99
66-111-80-1

KEN HECHLER
Secretary of State

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Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

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**EMERGENCY RULE DECISION
(ERD 12-99)**

AGENCY: W. Va. Health Care Authority
RULE: Amendments, Series 17, Health Services Offered by Health Professionals

FILED AS AN EMERGENCY RULE: June 30, 1999

- par. 1 The W. Va. Health Care Authority (HCA) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 W. Va. 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: 1) whether the emergency rule was promulgated in compliance with W.Va. Code § 29A-3-15; 2) whether the emergency rule exceeds the scope of the law authorizing or directing the promulgating thereof, and 3) whether an emergency exists justifying promulgation of the 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 Procedural Compliance: W. Va. 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 June 30, 1999 and with the LRMRC June 30, 1999.

par. 7

It is the determination of the Secretary of State that the HCA has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.

par. 8

Statutory Authority – W. Va. Code §16-2D-4(a)(1) reads:

Private office practice of any one or more health professionals licensed to practice in this state pursuant to the provisions of chapter thirty of this code: Provided, That such exemption from review of private office practice shall not be construed to include such practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed: Provided, however, That such exemption from review of private office practice shall not be construed to include the acquisition, offering or development of one or more health services, including ambulatory surgical facilities or centers, lithotripsy, magnetic resonance imaging and radiation therapy by one or more health professionals. The state agency shall adopt rules pursuant to section eight of this article which specify the health services acquired, offered or developed by health professionals which are subject to certificate of need review;

par. 9

§16-2D-8(c) of the W. Va. Code states:

Subsequent amendments and modifications to any rule promulgated pursuant to this article may be implemented by emergency rule.

par. 10

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

par. 11

Emergency – W. Va. 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. 12

There are three classes of emergency set forth in W.Va. Code § 29A-3-15(f), and an agency must show, 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. 13

The facts and circumstances as presented by the HCA are as follows:

The 1999 Legislature passed SB 492 which directs the Health Care Authority to file emergency rules to implement certain changes within the certificate of need law. W. Va. Code §§16-2D-4(a)(1) and 8(c) give the agency the authority to file this as an emergency rule.

The purpose of the certificate of need law is to contain or reduce increases in the cost of delivering health services. Furthermore, the agency is directed to protect the health and general welfare of the citizens of this state by ensuring that appropriate

and needed institutional health services are made available for all citizens. See W. Va. Code §16-2D-1.

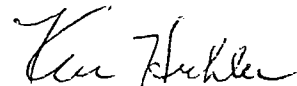
SB 492 requires major changes to the CON law. This rule implements some of these changes. The purpose of the CON law is to reduce increases in health service costs and to promote the health and general welfare of the public by ensuring that appropriate and needed health services are made available.

In addition, the HCA asserted W.Va. Code §§ 16-2D-3(b)(5) as a basis for filing this legislative rule as an emergency rule.

par. 14 W.Va. Code § 16-2D-4(a)(1) directs the HCA to promulgate legislative rules pursuant to W.Va. Code § 16-2D-8 specifying which health services acquired, offered or developed by health professionals are subject to certificate of need review. W. Va. Code §§ 16-2D-3(b)(5) requires the HCA to promulgate emergency rules specifying those health services which are subject to certificate of need review. W.Va. Code § 16-2D-8(c) grants the HCA discretionary authority to amend or modify its legislative rules by emergency rule; however, it does not exempt the HCA from the requirements of W.Va. Code § 29A-3-15 relating to the issue of whether an emergency exists. W.Va. Code § 16-2D-3(b)(5), which contains a specific legislative directive, relates to health services other than health services acquired, offered or developed by health professionals, and the HCA has failed to adequately advance any other grounds for an emergency, including, but not necessarily limited to, how the changes to CON law as reflected by SB 492 require the proposed amendments to this rule on an emergency basis. Accordingly, It is the determination of the Secretary of State that this proposal fails to qualify under the definition of an emergency as defined in §29A-3-15(f).

par. 14 In rendering this decision, it is important to note that the Secretary of State has not disapproved this proposed emergency rule on the basis that he disagrees with the underlying public policy established by the Legislature in enacting the supporting legislation or that he otherwise disagrees with the substance of the proposed emergency rule or the HCA's authority to advance the same.

par. 16 This decision shall be cited as Emergency Rule Decision 12-99 or ERD 12-99 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the W. Va. Health Care Authority, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Aug 11 11 03 AM '99
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Entered _____

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The rules in question were filed by the Health Care Authority on June 30, 1999. Subsequent to the filing the secretary received numerous comments questioning the agency's authority to promulgate the rules as emergency rules as well as objections to the changes in the rules. As a result of these comments the secretary scheduled a meeting with the agency and interested parties to make further investigation of the issues involved in his review of the proposed rules.

Based on the evidence presented in the meeting as well as a review of the proposed rules, state law and written arguments submitted by the agency and interested parties, the secretary found that the agency had exceeded the scope of its authority by promulgating rules which went beyond the legislature's emergency rule mandate, and that the agency had not quite proven the existence of an emergency with respect to the additional changes. In rejecting the rules the secretary stated "These rules presented complicated legal issues over the extent of the agency's statutory authority, and were not disapproved because I disagreed with the agency's policies or the substance of the rules."

Any questions or comments in regard to this matter may be directed to Judy Cooper in the Secretary of State's office.

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)

August 9, 1999

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

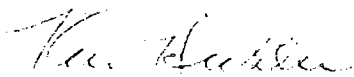
AGENCY: West Virginia Health Care Authority

RULE: Amendments, Series 7, Certificate of Need Rule

DATE FILED AS AN EMERGENCY RULE: June 30, 1999

DECISION NO. 11-99

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



KEN HECHLER
Secretary of State

CG. III 09 11 1999

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

AN CASTO
Deputy Secretary of State

Telephone: (304) 558-6000
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EMERGENCY RULE DECISION (ERD 11-99)

AGENCY: West Virginia Health Care Authority
RULE: Amendments, Series 7, Certificate of Need Rule
FILED AS AN EMERGENCY RULE: June 30, 1999

- par. 1 The West Virginia Health Care Authority (HCA) has filed the above rule as a repealed and replaced emergency rule.
- par. 2 W. Va. 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: 1) whether the emergency rule was promulgated in compliance with W. Va. Code § 29A-3-15; 2) whether an emergency exists justifying promulgation of the rule; and, 3) whether the emergency rule exceeds the scope of the law authorizing or directing the promulgating thereof.
- 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 Procedural Compliance: W. Va. 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 June 30, 1999 and with the LRMRC June 30, 1999.
- par. 7 It is the determination of the Secretary of State that the HCA has complied with the procedural requirements of W. Va. Code §29A-3-15 relating to the adoption of an emergency rule.

par. 8 Statutory Authority -- W. Va. Code §16-2D-3(b)(5) reads:

(5) The addition of health services as specified by the state agency which are offered by or on behalf of a health care facility or health maintenance organization and which were not offered on a regular basis by or on behalf of the health care facility or health maintenance organization within the twelve-month period prior to the time the services would be offered. The state agency shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code by the first day of July, one thousand nine hundred ninety-nine, to specify the health services which are subject to certificate of need review. The state agency shall specify by rule those health services subject to certificate of need as recommended by the certificate of need study conducted pursuant to section nineteen-a, article twenty-nine-b of this chapter.

par. 9 W. Va. Code further states in §16-2D-7(u):

Notwithstanding other provisions of this article, the state agency shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code by the first day of July, one thousand nine hundred ninety-nine, to establish a review process for nonhealth related projects. The review process shall not exceed forty-five days. The state agency shall specify in the rule which projects are eligible for this review.

par. 10 §16-2D-8(c) of the W. Va. Code states:

Subsequent amendments and modifications to any rule promulgated pursuant to this article may be implemented by emergency rule.

par. 11 W. Va. Code §§ 16-2D-3(b)(5) and 16-2D-7(u) authorize the HCA to promulgate emergency rules specifying those health services which are subject to certificate of need review and establishing a review process for nonhealth related projects. The proposal submitted by the HCA contains numerous changes from the existing rule which are beyond the scope of these legislative mandates. W.Va. Code § 16-2D-8(c) grants the HCA discretionary authority to amend or modify its legislative rules by emergency rule; however, it does not exempt the HCA from the requirements of W.Va. Code § 29A-3-15 relating to the issue of whether an emergency exists, and the HCA has failed to advance any grounds for an emergency other than the specific legislative directives discussed herein. Accordingly, it is the determination of the Secretary of State that the HCA has exceeded the scope of the law authorizing promulgation of this proposed rule as an emergency rule .

par. 12 Emergency -- W. Va. 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. 13

There are three classes of emergency set forth in W.Va. Code § 29A-3-15(f), and an agency must show, 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. 14

The facts and circumstances as presented by the HCA are as follows:

The 1999 Legislature passed SB 492 which directs the Health Care Authority to file emergency rules to implement certain changes within the certificate of need law. W. Va. Code §§16-2D-3(b)(5); 7(u) and 8(c) give the agency the authority to file this rule as an emergency rule.

The purpose of this rule is to update the certificate of need process to comply with requirements of SB 492.

par. 15

W.Va. Code §§16-2D-3(b)(5) and 7(u) establish time limitations and direct the HCA to promulgate emergency rules specifying those health services which are subject to certificate of need review and establishing a review process for nonhealth related projects. The proposal submitted by the HCA contains numerous changes from the existing rule which are beyond the scope of these legislative mandates. W.Va. Code § 16-2D-8(c) grants the HCA discretionary authority to amend or modify its legislative rules by emergency rule; however, it does not exempt the HCA from the requirements of W.Va. Code § 29A-3-15 relating to the issue of whether an emergency exists, and the HCA has failed to advance any grounds for an emergency other than the specific legislative directives discussed herein. Accordingly, it is the determination of the Secretary of State that the HCA has failed to show that an emergency exists with respect to this proposed emergency rule.

par. 16

In rendering this decision, it is important to note that the Secretary of State has not disapproved this proposed emergency rule on the basis that he disagrees with the underlying public policy established by the Legislature in enacting the supporting legislation or that he otherwise disagrees with the substance of the proposed emergency rule or the HCA's authority to advance the same.

par. 17

This decision shall be cited as Emergency Rule Decision 11-99 or ERD 11-99 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

KEN HECHLER
Secretary of State

OFFICE OF THE SECRETARY OF STATE

Nov 11 11 03 AM '99

Entered _____

**PROPOSED AMENDMENTS TO PROPOSED
LEGISLATIVE RULES - TITLE 65, SERIES 17**

AMENDMENT #1

The Committee moves to amend the proposed rule in subsection 2.1 of Title 65, Series 17 by striking "\$2,000,000.00" in the third and fourth lines, and adding "\$300,000.00" in each such line.

PURPOSE:

The purpose of this amendment is to maintain the current expenditure threshold of \$300,000.00 for a diagnostic center being offered by a health professional.

AMENDMENT #2

The Committee moves to amend the proposed rule in subsection 3.3.1 of Title 65, Series 17 by striking “End-stage renal dialysis stations and home training” and adding “Computerized tomography (CT)”.

PURPOSE:

The purpose of this amendment is to maintain the status quo with respect to the list of reviewable services offered by health professionals.

C0306387.1

**PROPOSED AMENDMENTS TO PROPOSED
LEGISLATIVE RULES - TITLE 64, SERIES 7**

AMENDMENT #1

The Committee moves to amend the proposed rule in subsection 2.1 of Title 65, Series 7 by striking “stock transfer” in the first and second lines, and by striking “or a majority of stock” in the third line.

PURPOSE:

The purpose of this amendment is to maintain the status quo as to the scope of the agency’s jurisdiction to review acquisitions of a health care facility.

AMENDMENT #2

The Committee moves to amend the proposed rule in subsection 2.8 of Title 65, Series 7 by striking the entire section, and by substituting the following language:

“Diagnostic services” means, as referenced in subsection 28.1.b of this rule, the offering or development of laboratory or imaging services at a new or existing health care facility or health maintenance organization; provided however, that a health care facility or health maintenance organization already offering one or more imaging services, including but not limited to, radiology, ultrasound, fluoroscopy, or computerized tomography at its existing facility, and that wishes to add at its existing facility imaging services not otherwise enumerated under subsection 28.1 and not constituting major medical equipment under subsection 2.16.j, shall not be deemed to be engaged in the addition of health care services under subsection 2.16.e of this rule.

PURPOSE:

The purpose of this amendment is to eliminate a capital expenditure threshold for the provision of diagnostic services as a new health care service by or on behalf of a health care facility or health maintenance organization, while maintaining the flexibility of existing providers of diagnostic services to reasonably upgrade such services.

AMENDMENT #3

The Committee moves to amend the proposed rule in subsection 2.14 of Title 65, Series 7 by deleting the entire section, and by re-numbering the remaining subsections in section 2 consistent with this deletion.

PURPOSE:

The purpose of this amendment is to maintain the status quo, in which there is no definition of a private office practice, until pending litigation on this issue has been finally resolved.

AMENDMENT #4

The Committee moves to amend the proposed rule in subsection 5.7 of Title 65, Series 7 by deleting the section, and by re-numbering the remaining provisions in Section 5 consistent with this deletion.

PURPOSE:

The purpose of this amendment is to remove the review process for non-health related projects from a full-blown application process to an exemption application process.

AMENDMENT #5

The Committee moves to amend the proposed rule in subsection 8.1 of Title 65, Series 7 by striking “not submit additional information unless it is requested by the board” in the first and second lines, and adding “the board may require the applicant to submit additional information, and the applicant and any affected person may choose to submit additional information” in its place.

PURPOSE:

The purpose of this amendment is to ensure the right of all affected persons and the applicant to submit relevant information for consideration by the agency.

AMENDMENT #6

The Committee moves to amend the proposed rule in subsection 10.4 by striking the entire section, and by substituting the following language:

The board shall review any standard application submitted to the board which falls within subsection 10.1.h of this rule in cycles beginning each month. On the last working day of each month the board shall collect those standard applications determined to be complete during that month and filed pursuant to subsection 10.1.h, and establish a sixty-five (65) day review cycle for those applications.

PURPOSE:

The purpose of this amendment is to eliminate the requirement for a full-blown application process for non-health related projects, and maintaining the status quo with respect to the batching process of other types of full-blown applications.

AMENDMENT #7

The Committee moves to amend the proposed rule in subsection 11.4 of Title 65, Series 7 by striking “Additional information may only be filed by an applicant at the request of the board” in the second and third lines.

PURPOSE:

The purpose of this amendment is to ensure the right of all affected persons and the applicant to submit relevant information for consideration by the agency.

AMENDMENT #8

The Committee moves to amend the proposed rule in subsection 11.4.b of Title 65, Series 7 by striking “or rate review” in the first and second lines.

PURPOSE:

The purpose of this amendment is to maintain the status quo with respect to the grounds under which the agency may refuse to deem a pending application complete and ready for review. The agency had proposed to expand those grounds by tying the certificate of need process and the rate review process together.

AMENDMENT #9

The Committee moves to amend the proposed rule in subsection 11.21 of Title 65, Series 7 by adding “provided however, that such prohibition shall be without prejudice to an affected person or an applicant who later decides to file such requests and responses as evidence in connection with the public hearing” at the end of the section.

PURPOSE:

The purpose of this amendment is to ensure that any affected person or the applicant may submit any and all relevant and admissible evidence at the public hearing.

AMENDMENT #10

The Committee moves to amend the proposed rule in section 12 of Title 65, Series 7 by adding new subsections 12.7 and 12.8 as follows:

12.7 If the board determines that a substantially competitive market exists or may occur for a new institutional health service, the board may give minimal consideration to the review criteria set forth in subsections 12.3.b, 12.3.d, 12.3.e, 12.3.f, 12.3.g, 12.3.i, 12.3.l, 12.3.r, 12.3.s, and 12.3.v of this rule that tend to compensate for the absence of market controls in a noncompetitive market.

12.8 The board shall, in its consideration of an application, give significant consideration to the review criteria set forth in subsections 12.3.p and 12.3.q of this rule. Where supply of a health service is, or upon approval would be, within an acceptable range of supply for that service, the board may give significant consideration to whether the applicant has suitably demonstrated that approval of the application will, through the implementation of improvements or innovations in financing, reimbursement, service delivery arrangements or other means, strengthen the effect of competition on the surface by creating incentives for the market to respond to the quality of services delivered or prices charged, or by placing the applicant at greater financial risk. Depending upon the circumstances, such innovations may include prepayment provider contracts with potential patients for the delivery of the service, arrangements for more reliance upon private payment for services where appropriate or provider-insurer risk contracts with clearly established limits on prices or such a contract with effective utilization controls.

PURPOSE:

The purpose of this amendment is to maintain the status quo, which requires the agency to grant special preferences to applications that have the result of strengthening the effect of competition upon the supply of health services. The agency had deleted these statutorily-required provisions in their entirety from the proposed legislative rule.

AMENDMENT #11

The Committee moves to amend the proposed rule in section 15 of Title 65, Series 7 by adding new subsection 15.5 as follows, and by re-numbering the remaining subsections in section 15 consistent with this addition:

15.5 The board may exempt from certificate of need review the obligation of a capital expenditure by or on behalf of a health care facility for a non-health related project if the board finds that the services or bed capacity of the health care facility will not be changed as a result of the non-health related project, if the board finds that the non-health related project is financially feasible, and if the board finds that the applicant has adequate resources to ensure the viability of the project.

PURPOSE:

The purpose of this amendment is to establish that non-health related projects will be reviewed pursuant to an exemption application process.

AMENDMENT #12

The Committee moves to amend the proposed rule in subsection 16.3 of Title 65, Series 7 by striking “Additional information may only be submitted upon request of the board” in the sixth and seventh lines, and by adding “Additional information may be submitted by any affected person or the applicant for consideration by the board” in its place.

PURPOSE:

The purpose of this amendment is to ensure the right of all affected persons and the applicant to submit relevant evidence for consideration by the agency.

AMENDMENT #13

The Committee moves to amend the proposed rule in subsection 16.7 of Title 65, Series 7 by adding “provided however, that this prohibition shall be without prejudice to an affected person or an applicant who later decides to file such requests and response as evidence in connection with the public hearing” at the end of the section.

PURPOSE:

The purpose of this amendment is to ensure that any affected person or the applicant may submit any and all relevant and admissible evidence at the public hearing.

C0306403.1

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule-Making Review

Date 8-15-99

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Monday, August 16, 1999
5 to 7 p.m.
Senate Finance Committee Room M-451

1. Review of Legislative Rules:

- a. **Division of Highways**
Traffic and Safety Rule, 157CSR5
- b. **Division of Natural Resources**
Issuance of Hunting, Trapping and Fishing Licenses by Telephone and Other Electronic Methods, 58CSR68
- c. **Division of Natural Resources**
Special Fishing Rule, 58CSR61
- d. **Division of Natural Resources**
General Trapping Rule, 58CSR53
- e. **Division of Natural Resources**
Rules Governing Public Use of WV State Parks, State Forests, Wildlife Management Areas Under the Division of Natural Resources, 58CSR31
- f. **Nursing Home Administrators Licensing Board**
Nursing Home Administrators, 21CSR1
- g. **West Virginia Board of Medicine**
Fees for Services Rendered by the Board of Medicine, 11CSR4
- h. **Insurance Commissioner**
Continuing Education for Insurance Agents, 114CSR42
- i. **Insurance Commissioner**
Quality Assurance Standards for Prepaid Limited Health Service Organizations, 114CSR56
- j. **Office of the State Auditor**
Transaction Fee and Rate Structure, 155CSR4

k. **Office of the State Auditor**
*Standards for Requisitions for Payment Issued by State
Officers on the Auditor, 155CSR1*

l. **West Virginia State Police**
West Virginia State Police Career Progression System, 81CSR3

2. **Other Business**

a. **Racing Commission**
Greyhound Racing, 178CSR2

Monday, August 16, 1999

12:00 p.m. - 2:00 p.m.

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Earl Ray Tomblin
ex officio nonvoting member

Robert "Bob" Kiss
ex officio nonvoting member

Senate

House

Ross, Chairman
Anderson, Vice Chairman
Schoonover Absent
Snyder
Unger
Minear

Hunt, Chairman
Linch, Vice Chairman
Compton
Jenkins
Faircloth
Riggs

The meeting was called to order by Mr. Hunt, Co-Chairman.

Mr. Hunt told the Committee that the rule proposed by the *Office of the State Auditor-Transaction Fee and Rate Structure, 155CSR4*, had been removed from the agenda.

Debra Graham, Committee Counsel, reviewed her abstract on the rule proposed by the *Office of the State Auditor-Standards for Requisitions for Payment Issued by State Officers on the Auditor, 155CSR1*, and stated that the Office of the State Auditor has agreed to technical modifications.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Rita Pauley, Associate Counsel, stated that the rule proposed by the *Division of Highways-Traffic and Safety Rule, 157CSR5*, had been laid over from the previous meeting. She explained the modifications proposed by the Division. Leff Moore, representing the West Virginia Manufactured Housing Association, responded to questions from the Committee.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the *Division of Natural Resources-Issuance of Hunting, Trapping and Fishing Licenses by Telephone and Other Electronic Methods, 58CSR68*, and stated that the Division has agreed to technical modifications. Gordon Robertson, Deputy Chief of Wildlife Resources, responded to questions from the Committee.

Mr. Unger moved that Sections 3.2 and 4.2 of the proposed rule be modified to change the fee for obtaining a hunting, trapping or fishing license by telephone or Internet from \$5 to up to- not to exceed \$5. The motion was adopted.

Mr. Linch moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the *Division of Natural Resources-Special Fishing Rule, 58CSR61*, and stated that the Division has agreed to technical modifications.

Mr. Linch moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the *Division of Natural Resources-General Trapping Rule, 58CSR53*.

Mr. Ross moved that the proposed rule be approved. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the *Division of Natural Resources-Rules Governing Public Use of West Virginia State Parks, State Forests, Wildlife Management Areas Under the Division of Natural Resources, 58CSR31*, and stated that the Division has agreed to technical modifications. She and Robert Beanblossom, District Administrator for Parks and Recreation, responded to questions from the Committee.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the *Nursing Home Administrators Licensing Board-Nursing Home Administrators, 21CSR1*, and stated that the Board has agreed to technical modifications. She and Alberta Slack, Director of the Nursing Home Administrators Licensing Board, responded to questions from the Committee.

Ross moved that the proposed rule be approved as modified. The motions was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the *West Virginia Board of Medicine-Fees for Services Rendered by the Board of Medicine, 11CSR4*. Deborah Rodecker, Counsel for the Board of Medicine, addressed the Committee. Amy Tolliver and Dr. David Avery, representing the West Virginia Medical Association, addressed the Committee and responded to questions.

Mr. Ross moved that the proposed rule be laid over. The motion was adopted.

Ms. Pauley explained the rule proposed by the *Insurance Commissioner-Continuing Education for Insurance Agents, 114CSR42*.

Mr. Ross moved that the proposed rule be approved. The motion was adopted.

Ms. Pauley reviewed her abstract on the rule proposed by the *Insurance Commissioner-Quality Assurance Standards for Prepaid Limited Health Service Organizations, 114CSR56*.

Mr. Ross moved that the proposed rule be approved. The motion was adopted.

Ms Graham explained the rule proposed by the *West Virginia State Police-West Virginia State Police Career Progression System, 81CSR3*, and stated that the State Police has agreed to technical modifications. Sgt. Steve Cogar, from the State Police, responded to questions from the Committee.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained that the rule proposed by the *Racing Commission-Greyhound Racing, 178CSR2*, had been approved as modified at the last Committee meeting, and that since that meeting, the Commission had asked that sections in the rule pertaining to split-sampling be deleted.

Having voted on the prevailing side, Mr. Ross moved that the Committee reconsider its action whereby it approved the proposed rule as modified. The motions was adopted.

Mr. Ross moved that the proposed rule be approved as modified. The motion was adopted.

The meeting was adjourned.

* BD request for Ross Class Q licenses

5:00 - 7:00 p.m.

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Senate Finance Room

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

- Senate
- ✓ Ross, Chair
 - ✓ Anderson, Vice Chair
 - Schoonover
 - Snyder
 - ✓ Unger
 - ✓ Minear

- House
- ✓ Hunt, Chair
 - ✓ Linch, Vice Chair
 - Compton
 - ✓ Jenkins
 - ✓ Faircloth
 - ✓ Riggs

Auditor - Stnds for Requisitions

Ross
adopted

Approve as mod

Division of Highways - Trathe

Ross
adopted

Atk explained posture of proposed rule; explained
proposed modifications.

Approve as mod

DNR - Hunting

Linch
adopted

I explained

Gordon Robertson, Wildlife Resources and questions

Approve as mod

Unger
adopted

Fees up to - not to exceed \$5.

DNR - Sp F

Linch
adopted

Approve as mod

DNR - Gen Trapping

Ross
adopted

Approve as mod

DNR - Public Use

Ross
adopted

I explained & responded to a
Robt Beanblossom, \ responded to a
Approve as mod

Nursing Home Administrators

Ross
adopted

I explained and responded to questions
Alberta Stalk responded to questions
Approve as mod

Board of Medicine - Fees

Ross
adopted

I explained
Deborah Roedator explained need for increased fee
Lay over til Sept

Anderson

Allow Any Tolliver, State Med Assn to speak on Bd
of Medicine rule → Assn oppose fees

Dr. Avery addressed the C and responded to q's

Insurance Commissioner - Cont Ed

Ross
adopted

Rita explained

Approve

Insurance - Quality Assurance

Rita explained

Ross

Approve

State Police - Career Progression

I explained

Ross

Approve

St. Coyle responded to qs

Racing Commission - Greyhounds

Ross
adopted

Reconsider

Ross
adopted

Approve as mod

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Monday, August 16, 1999
5 to 7 p.m.
Senate Finance Committee Room M-451

1. Review of Legislative Rules:

*Approved ✓ a.
as modified*
Division of Highways -
Traffic and Safety Rule, 157CSR5

*Approved ✓ b.
as modified*
Division of Natural Resources -
Issuance of Hunting, Trapping and Fishing Licenses by
Telephone and Other Electronic Methods, 58CSR68

*Approved ✓ c.
as modified*
Division of Natural Resources -
Special Fishing Rule, 58CSR61

*Approved ✓ d.
as modified*
Division of Natural Resources -
General Trapping Rule, 58CSR53

*Approved ✓ e.
as modified*
Division of Natural Resources -
Rules Governing Public Use of WV State Parks, State Forests,
Wildlife Management Areas Under the Division of Natural
Resources, 58CSR31

*Approved ✓ f.
as modified*
Nursing Home Administrators Licensing Board -
Nursing Home Administrators, 21CSR1

*Laid over til
Sept. ✓ g.
approved*
West Virginia Board of Medicine
Fees for Services Rendered by the Board of Medicine, 11CSR4

Insurance Commissioner -
Continuing Education for Insurance Agents, 114CSR42

Approved ✓ h.
Insurance Commissioner -
Quality Assurance Standards for Prepaid Limited Health
Service Organizations, 114CSR56

*Approved ✓ i.
as modified*
Office of the State Auditor -
Transaction Fee and Rate Structure, 155CSR4

Removed ✓
Office of the State Auditor

Standards for Requisitions for Payment Issued by State
Officers on the Auditor, 155CSR1

*Approve ✓
as modified*
West Virginia State Police-

West Virginia State Police Career Progression System, 81CSR3

2. Other Business

*Approve ✓
as modified*
a. Racing Commission -

Greyhound Racing, 178CSR2

AUGUST INTERIM SCHEDULE
Legislative Interim Meetings
August 15, 16, and 17, 1999

Monday, August 16, 1999

5:00 - 7:00 p.m.

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Earl Ray Tomblin, ex
officio nonvoting member

Robert S. Kiss, ex
officio nonvoting member

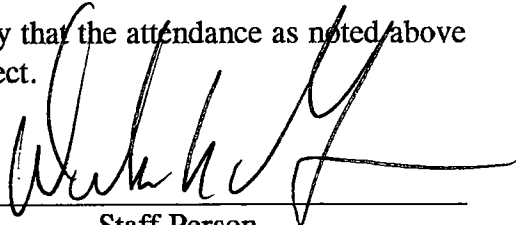
Senate

Ross, Chair	<u>✓</u>
Anderson, Vice Chair	<u>✓</u>
Schoonover	<u> </u>
Snyder	<u>✓</u>
Unger	<u>✓</u>
Miner	<u>✓</u>

House

Hunt, Chair	<u>✓</u>
Linch, Vice Chair	<u>✓</u>
Compton	<u> </u>
Jenkins	<u>✓</u>
Faircloth	<u>✓</u>
Riggs	<u>✓</u>

I certify that the attendance as noted above
is correct.



Staff Person

Debra

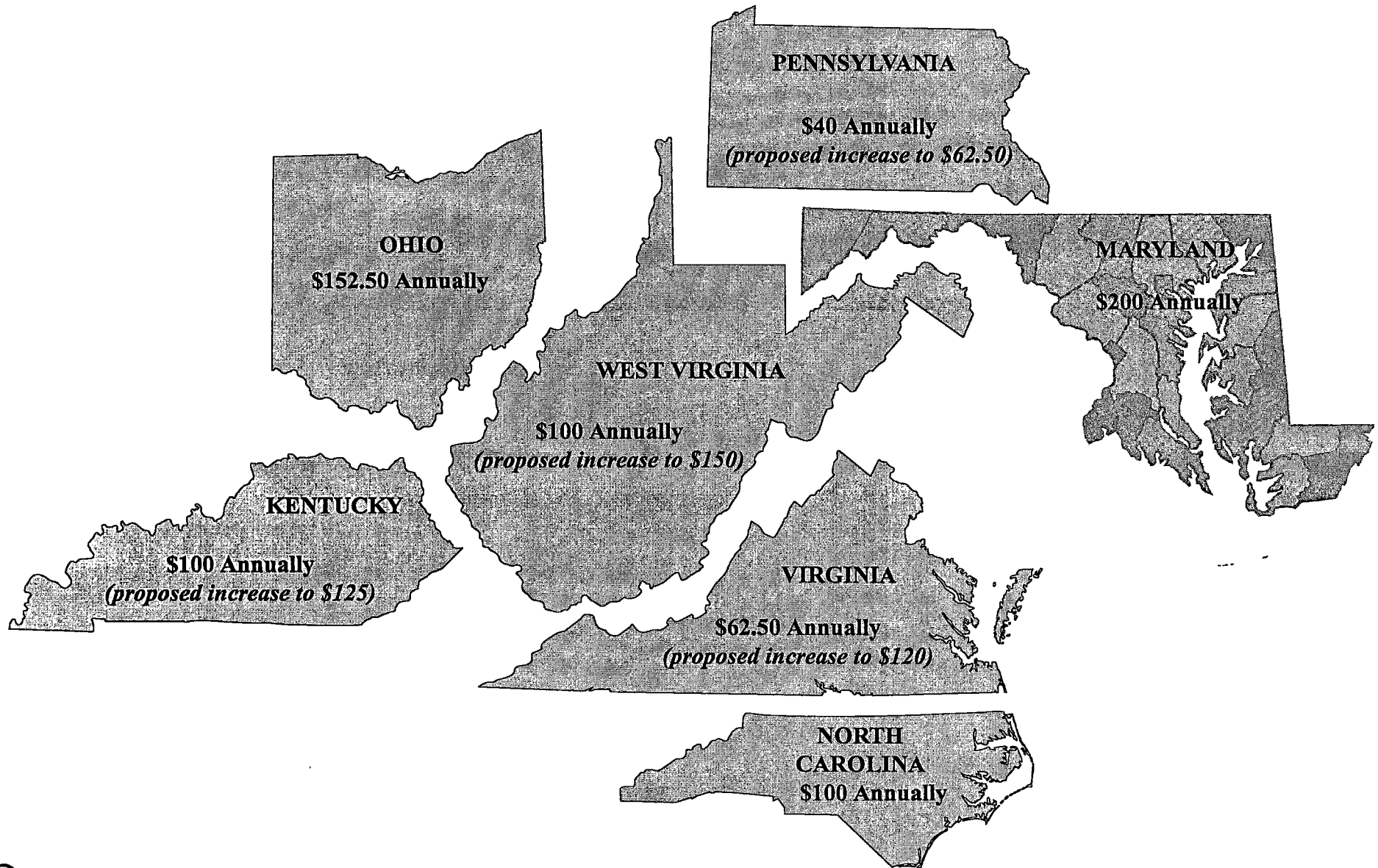
REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

Committee: Legislative Rule-Making Review Committee
Please print or write plainly.

Date 8-16-99

NAME	ADDRESS	REPRESENTING	Please check (X) if you desire to make a statement.
Ray Lewis		Highways	
Alan Caervo		Highways	
Bill Wolford		Highways	
Jeff Davis		Highways	
Alberta Slack		N.H.H.L. Board	
Deborah Lewis Rodecker		WV Bd of Medicine	X
Amy Tolliver		WV State Medical Assn.	-
DR. David Avery		WV State Medical Assn	-

Annual Renewal Fees of Surrounding States



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