WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED

SENATE BILL NO. 137

(By Senators Wagner & Bailey)

PASSED March 9, 1996
In Effect NINETY DAYS FROM Passage
AN ACT to amend and reenact section twenty, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to hospital rate setting; requiring approvals and expedited reviews for certain hospitals filing rate applications sixty days in advance of the hospital's fiscal year; and requiring retroactive application of the rates if not timely set.

Be it enacted by the Legislature of West Virginia:

That section twenty, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 29B. HEALTH CARE COST REVIEW AUTHORITY.
§16-29B-20. Rate determination.

(a) Upon commencement of review activities, no rates may be approved by the board nor payment be made for services provided by hospitals under the jurisdiction of the board by any purchaser or third-party payor to or on behalf of any purchaser or class of purchasers unless:

(1) The costs of the hospital’s services are reasonably related to the services provided and the rates are reasonably related to the costs;

(2) The rates are equitably established among all purchasers or classes of purchasers within a hospital without discrimination unless federal or state statutes or rules and regulations conflict with this requirement. On and after the effective date of this section, a summary of every proposed contract for the payment of patient care services between a purchaser or third-party payor and a hospital shall be filed by the hospital with its rate application for review by the board. No contract for the payment of patient care services between a purchaser or third-party payor and a hospital which establishes discounts to the purchaser or third-party payor shall take effect until it is approved by the board. The board shall approve or deny the proposed contract within the overall rate review period established in section twenty-one of this article. No discount shall be approved by the board which constitutes an amount below the actual cost to the hospital.

The hospital shall demonstrate to the board that the cost of any discount contained in the contract will not be shifted to any other purchaser or third-party payor. The hospital shall further demonstrate that the discount will not result in a decrease in its proportion of medicare, medicaid or uncompensated care patients. In addition, the hospital shall demonstrate to the board that the discount is based upon criteria which constitutes a quantifiable economic benefit to the hospital. All information submitted to the board shall be certified by
the hospital administrator as to its accuracy and truth-

(3) The rates of payment for medicaid are reasonable
and adequate to meet the costs which must be incurred
by efficiently and economically operated hospitals
subject to the provisions of this article. The rates shall
take into account the situation of hospitals which serve
disproportionate numbers of low income patients and
assure that individuals eligible for medicaid have
reasonable access, taking into account geographic
location and reasonable travel time, to inpatient hospital
services of adequate quality;

(4) The rates are equitable in comparison to prevailing
rates for similar services in similar hospitals as deter-

(5) In no event shall a hospital’s receipt of emergency
disaster funds from the federal government be included
in the hospital’s gross revenues for either rate-setting or
assessment purposes.

(b) In the interest of promoting efficient and appropri-
ate utilization of hospital services, the board shall review
and make findings on the appropriateness of projected
gross revenues for a hospital as the revenues relate to
charges for services and anticipated incidence of service.
The board shall further render a decision as to the
amount of net revenue over expenditures that is appro-
priate for the effective operation of the hospital.

(c) When applying the criteria set forth in subsections
(a) and (b) of this section, the board shall consider all
relevant factors, including, but not limited to, the
following: The economic factors in the hospital’s area;
the hospital’s efforts to share services; the hospital’s
efforts to employ less costly alternatives for delivering
substantially similar services or producing substantially
similar or better results in terms of the health status of
those served; the efficiency of the hospital as to cost and
delivery of health care; the quality of care; occupancy
level; a fair return on invested capital, not otherwise
compensated for; whether the hospital is operated for
profit or not-for-profit; costs of education; and income
from any investments and assets not associated with
patient care, including, but not limited to, parking
garages, residences, office buildings, and income from
related organizations and restricted funds whether or
not associated with patient care.

(d) Wages, salaries and benefits paid to or on behalf of
nonsupervisory employees of hospitals subject to this
article are not subject to review unless the board first
determines that the wages, salaries and benefits may be
unreasonably or uncustomarily high or low. This exemp-
tion does not apply to accounting and reporting require-
ments contained in this article, nor to any that may be
established by the board. The term “nonsupervisory
personnel”, for the purposes of this section, means, but
is not limited to, employees of hospitals subject to the
provisions of this article who are paid on an hourly basis.

(e) Reimbursement of capital and operating costs for
new services and capital projects subject to article two-d
of this chapter shall not be allowed by the board if the
costs were incurred subsequent to the eighth day of July,
one thousand nine hundred seventy-seven, unless they
were exempt from review or approved: (i) By the state
health planning and development agency prior to the
first day of July, one thousand nine hundred eighty-four;
or (ii) thereafter, pursuant to the provisions of article
two-d of this chapter.

(f) The board shall consult with relevant licensing
agencies and may require them to provide written
findings with regard to their statutory functions and
information obtained by them in the pursuit of those
functions. Any licensing agency empowered to suggest
or mandate changes in buildings or operations of hospi-
tals shall give notice to the board together with any
findings.

(g) A hospital shall file a complete rate application
with the board on an annual basis a minimum of sixty
days prior to the beginning of its fiscal year. If the
application is filed and determined to be complete by the
board sixty days prior to the beginning of the hospital’s
fiscal year, and no hearing is requested on the applica-
tion, the board shall set the rates in advance of the year
during which they apply and shall not adjust the rates
for costs actually incurred: Provided, That if the board
does not establish rates by the beginning of the hospital’s
fiscal year, and a hearing has not been requested, the
board shall establish rates retroactively to the beginning
of the hospital’s fiscal year: Provided, however, That if
the board does not establish rates by the beginning of the
hospital’s fiscal year, and a hearing has been requested,
the board may establish rates retroactively to the begin-
ing of the fiscal year. This subsection shall not apply to
the procedure set forth in subsection (c), section twenty-
one of this article.

(h) All determinations, orders and decisions of the
board with respect to rates and revenues shall be pro-
spective in nature, except as provided in subsection (g)
of this section, when rates are not timely set.

(i) No hospital may charge for services at rates in
excess of those established in accordance with the
requirements of and procedures set forth in this article.

(j) Notwithstanding any other provision of this article,
the board shall approve all requests for rate increases by
hospitals which are licensed for one hundred beds or less
and which are not located in a standard metropolitan
statistical area where the rate of increase is equal to or
less than the lowest rate of inflation as established by a
recognized inflation index for either the national or
regional hospital industry. The board may, by rule,
 impose reporting requirements to ensure that a hospital
does not exceed the rate of increases permitted in this
section.

(k) Notwithstanding any other provision of this article,
the board shall develop an expedited review process
applicable to all hospitals licensed for more than one hundred beds or that are located in a standard metropolitan statistical area for rate increase requests which may be based upon a recognized inflation index for the national or regional hospital industry.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 28th day of March, 1996.

Governor