



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-  
MAKING REVIEW COMMITTEE**

AGENCY: Health Care Authority TITLE-SERIES: 65-13  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 65-13 Financial Disclosure Rule

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: 16-29B-8(b)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The Secretary of the Department of Health and Human Resources shall propose rules for legislative approval in accordance with W. Va. Code §29A-3-1 et seq. to implement the all of the provisions of W. Va. Code § 16-29B-8 (b). The Department of Health and Human Resources is empowered to enact each provision of W. Va. Code of State Rules 64-13 by the authority specifically found in W. Va. Code § 16-29B-8(b).

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/27/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/27/2017

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

Web page and agency newsletter.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This legislative rule implements the financial reporting requirements for covered entities.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The 2017 Legislature found that health care services will be disrupted and important data and the citizens could be lost which could create significant hardships upon healthcare providers and citizens of this state.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

N/A

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2017 Increase/Decrease (use "-")	2018 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0		0
<b>Personal Services</b>			
<b>Current Expenses</b>			
<b>Repairs and Alterations</b>			
<b>Assets</b>			
<b>Other</b>			
<b>2. Estimated Total Revenues</b>	0		0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.**

TITLE 65  
LEGISLATIVE RULE  
HEALTH CARE ~~COST-REVIEW~~ AUTHORITY

SERIES 13  
FINANCIAL DISCLOSURE RULE

**§65-13-1. General.**

1.1. Scope. -- This legislative rule implements ~~the provisions of the Health Care Facility Financial Disclosure Act found at W. Va. Code §16-5F-1 et seq., and the financial reporting requirements of W. Va. Code §16-29B-1 et seq. This rule is not applicable to nor does it include contracts with third-party payors.~~

1.2. Authority. -- W. Va. Code ~~§§16-5F-3; §16-29B-8(a)(b), 17, 18, and 23.~~

1.3. Filing Date. -- ~~April 10, 1992.~~

1.4. Effective Date. -- ~~April 10, 1992.~~

1.5. ~~This rule shall not be construed to require duplicative filings of any reports, records, data, or other information required to be filed with the board pursuant to any other statute or rule. However, the board may require the filing of the reports, records, data or other information required by this rule, even if the information is duplicative, if the board cannot easily ascertain the information to be provided by these rules in any other material previously filed with the board.~~ Sunset Provision. This rule shall terminate and have no further force or effect upon the expiration of 5 years from its effective date.

**§65-13-2. Definitions.**

2.1. ~~"Act" means the Health Care Facility Financial Disclosure Act, W. Va. Code §16-5F-1 et seq.~~

2.21. ~~"Annual financial report" means a annual financial report which includes the basic financial statements for the fiscal year of the covered facility or related organization. The financial statements of not for profit and government health care entities consist of a balance sheet, a statement of revenues and expenses of general funds, a statement of changes in fund balances, a statement of cash flows of general funds and a statement of cash flows of restricted funds of government health entities. The basic statements of investor owned health care facilities are similar to those of other investor owned entities in accordance with generally accepted accounting principles. An independent accountant or the auditor of the covered facility or related organization shall prepare the report.~~ complete audited financial statement for the preceding fiscal year, including all notes, schedules, and documents, prepared and presented by an independent accountant or the auditor of the covered facility or related organization. If an audited financial report is not prepared by a covered facility or related organization, then that facility or organization shall provide the authority a statement of income (revenues and expenses), a statement of changes

in retained earnings (fund balances), a statement of cash flows, a balance sheet for the reporting period and/or any other statement as required by generally accepted accounting principles. A nonprofit, community based primary care center providing primary care services without regard to ability to pay shall provide the Secretary with a year-end audited financial statement prepared in accordance with generally accepted auditing standards and with governmental auditing standards issued by the Comptroller General of the United States.

2.32. "Board" means the Health Care Cost Review Authority established pursuant to W. Va. Code §16-29B-5. "Authority" means the Health Care Authority created pursuant to the provisions of W. Va. Code §16-29B-1 et seq.

2.43. "Covered facility" means ~~any~~ a hospital, behavioral health facility ~~skilled nursing facility~~, kidney disease treatment center (including a free-standing hemodialysis unit), ~~nursing facility~~, ambulatory health care facility (not to include county health departments or those free clinics that provide all of their services without cost to the patient), ambulatory surgical facility, home health agency, rehabilitation facility, ~~health maintenance organization~~ or community mental health or ~~mental retardation~~ intellectual disability facility, whether under public or private ownership or as a profit or nonprofit organization and whether or not licensed or required to be licensed in whole or in part by the state. Provided, that nonprofit, community-based primary care centers providing primary care services without regard to ability to pay which provide the Secretary with a year-end audited financial statement prepared in accordance with generally accepted auditing standards and with governmental auditing standards issued by the Comptroller General of the United States shall be deemed to have complied with the disclosure requirements of this section. A covered facility does not mean the private office practice of one or more health professionals licensed to practice in this state pursuant to W. Va. Code, §30-1-1 et. seq., unless the practice is certified as an ambulatory surgical facility or center.

2.4. "Health care provider" means a person, partnership, corporation, facility, hospital or institution licensed, certified or authorized by law to provide professional health care service in this state to an individual during this individual's medical, remedial, or behavioral health care, treatment or confinement. The term "health care provider" does not include the private office practice of one or more health care professionals licensed to practice in this state pursuant to the provisions of W. Va. Code §30-1-1 et seq.

2.5. "Home health agency" means an organization primarily engaged in providing professional nursing services either directly or through contract arrangements and at least one of the following services:

2.5.a. Home health aide services;

2.5.b. Physical therapy;

2.5.c. Speech therapy;

2.5.d. Occupational therapy;

2.5.e. Nutritional services; or

2.5.f. Medical social services to persons in their place of residence on a part-time or intermittent basis.

2.5.2.6. "Hospital" means ~~any health care~~ a facility licensed subject to licensure as such pursuant to W. Va. Code §16-5B-1 et seq., and any acute care facility operated by the ~~State~~ state government which is primarily engaged in providing to inpatients, by or under the supervision of a physicians, diagnostic and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons, ~~or rehabilitation services for the rehabilitation of injured, disabled or sick persons~~ and does not include state mental health facilities or state long-term care facilities. The term "hospital" also includes, but is not limited to, specialty hospitals such as acute care psychiatric hospitals, tuberculosis hospitals and rehabilitation hospitals. The term "hospital" does not include federally owned or operated facilities or state-owned or operated mental health or long-term care facilities.

2.7. "Rates" means all value given or money payable to health care providers for health care services, including fees, charges and cost reimbursements.

2.8. "Records" means accounts, books and other data related to health care costs at health care facilities subject to the provisions of W. Va. Code §16-29B-1 et seq. which do not include privileged medical information, individual personal data, confidential information, the disclosure of which is prohibited by other provisions of this code and the laws enacted by the federal government, and information, the disclosure of which would be an invasion of privacy.

~~2.6.2.9.~~ "Related organization" means an organization, whether publicly owned, nonprofit, tax-exempt or for-profit, related to a ~~covered facility~~ health care provider through common membership, governing bodies, trustees, officers, stock ownership, family members, partners or limited partners, including but not limited to subsidiaries, foundations, related corporations and joint ventures. For the purposes of this subsection family members means brothers and sisters, whether by the whole or half blood, spouses, ancestors and lineal descendants. An organization is considered to be related to a covered facility if one of the following conditions is met:

~~(a)~~ 2.9.a. The organization controls or is controlled by a covered facility through contracts or other legal documents that allow the organization the authority to direct any of the covered facility's activities, management or policies, or allows the covered facility to direct any of the organization's activities, management or policies;

~~(b)~~ 2.9.b. The organization has solicited funds in the name of the covered facility with the express or implied approval of the covered facility, and a substantial portion of the funds was intended by the contributor, or was otherwise required, to be used for the benefit of the covered facility;

~~(c)~~ 2.9.c. The covered facility has transferred resources to the organization and a substantial portion of the organization's resources is held for the benefit of the covered facility;

~~(d)~~ 2.9.d. The organization has transferred resources to the covered facility and a substantial portion of the covered facility's resources is held for the benefit of the organization;

(e) 2.9.e. The covered facility has assigned certain of its functions to the organization, which is operating primarily for the benefit of the covered facility;

(f) 2.9.f. The organization is wholly-owned or was created by the covered facility, and the covered facility receives any of the profits of the organization; or

(g) 2.9.g. The covered facility is wholly-owned or was created by the organization, and the organization receives any of the profits of the covered facility.

(h) 2.9.h. In the event of the dissolution of the related entity, substantially all of the assets of the entity would become the property of the creating entity.

~~2.7. "Rates" means all rates, fees and charges imposed by any covered facility or related organization for health care services.~~

~~2.8. "Records" includes accounts, books, charts, contracts, documents, files, maps, papers, profiles, reports, annual and otherwise, schedules and any other fiscal data, however recorded or stored.~~

~~2.9. "Trial balance" means a list of the debit and credit balances of all accounts in the hospital's general ledger after audit adjustments as of the end of the fiscal year.~~

2.10 "Statute" means the financial reporting requirements contained in W.Va. Code §16-29B-1 et seq.

### ~~§65 3 3. Annual Public Disclosure Report.~~

~~3.1. Within one hundred twenty (120) days after the end of its fiscal year, each covered facility and related organization shall file with the board and publish as a Class I legal advertisement an annual disclosure report prepared by an independent accountant or the auditor of the covered facility or related organization. The published annual disclosure report shall contain only those items specified in subsection 3.5 of this rule and shall be prepared in accordance with generally accepted accounting principles. The publication shall comply with the provisions of W. Va. Code §59-3-2 and the covered facility or related organization shall place the report in a qualified newspaper published in the county where it is located. The board may, upon good cause shown, extend the period for publication. The covered facility or related organization must file a copy of the advertisement with the board within thirty (30) days of its publication.~~

~~3.2. If there is more than one qualified newspaper of general circulation in the county where the covered facility or related organization is located, the covered facility or related organization shall publish the report in the newspaper with the largest circulation.~~

~~3.3. If a qualified newspaper is not published in the county where the covered facility or related organization is located, the covered facility or related organization shall publish the report in a qualified newspaper published outside the county which has the widest circulation in the county where the covered facility or related organization is located.~~

~~3.4. The annual public disclosure report shall be for each individual covered facility or related organization. If a covered facility or related organization is a division or subsidiary of another entity which owns or operates other covered facilities or related organizations, the annual public disclosure report shall be for the specific division or subsidiary and not for the aggregate of or combined covered facilities or related organizations of the other entity.~~

~~3.5. The annual public disclosure report shall include the following:~~

~~3.5.1. A balance sheet.~~

~~3.5.2. A statement of income (revenues and expenses).~~

~~3.5.3. A statement of changes in retained earnings (fund balances).~~

~~3.5.4. A statement of ownership for persons owning more than five percent (5%) of the capital stock outstanding and the dividends paid thereon, if any, and to whom paid for the reporting period unless the covered facility or related organization is duly registered on the New York stock exchange, the American stock exchange, any regional stock exchange or its stock is actively traded over the counter. The statement shall also contain a disclosure of ownership by any parent company or ownership of any subsidiary. Nothing in this rule requires an individual investor with less than a forty percent (40%) ownership interest in a health care facility or related organization to submit a personal financial statement.~~

~~3.5.5. A prominent notice that the details concerning the contents of the advertisement, together with the other reports, statements and schedules required to be filed with the board are available for public inspection and copying at the board's office.~~

### **§65-13-43. Statements, Schedules, Reports to be Filed with Board Authority.**

~~43.1. Every covered facility and related organization shall file with the board authority the following statements, schedules or reports within ~~one hundred twenty (120)~~ days after the end of its respective fiscal year or at such other times as may be required by the board authority in writing or pursuant to these rules. The board authority may, for good cause shown, extend the time for filing.~~

~~4.1.1. 3.1.a. An annual financial report. A complete audited financial report for the preceding fiscal year prepared and presented by an independent accountant or the auditor of the covered facility or related organization. All notes, schedules and documents as required by the audit guidelines of the American Institute of Certified Public Accountants shall accompany the report. If an audited financial report is not prepared by a covered facility or related organization, then that facility or organization shall provide the board a statement of income (revenues and expenses), a statement of changes in retained earnings (fund balances), a statement of cash flows, a balance sheet for the reporting period and/or any other statement as required by generally accepted accounting principles.~~

~~4.1.2 A statement of services available and services rendered. If the facility is a nursing home,~~

~~it shall complete and return to the board a copy of its Annual Report of Nursing Homes within thirty (30) days of its receipt of the blank form. If the facility is a hospital, it shall complete and return to the board a copy of its annual survey report for the American Hospital Association within fifteen (15) days of rendering the report to the Association.~~

~~4.1.3. The approved budget and the annual capital expenditures budget for the forthcoming fiscal year which sets forth the total financial needs of the covered facility or related organization and the resources available or expected to become available to meet such needs. Budget formats may be those customarily used by the facility or organization for its own internal purposes but must, at a minimum, state the projected patient revenues and expenses by individual cost center and the details of other anticipated operating and non-operating revenues and expenses.~~

~~4.1.4. 3.1.b. A complete schedule of its current rates for all patient services provided by the covered facility or related organization at the close of its fiscal year, except a behavioral health facility shall submit its gross rates for its top 30 services by utilization. Hospitals shall file a charge master and all other providers, except behavioral health providers, shall file a schedule of rates for all services provided.~~

~~4.1.5. If the covered facility or related organization is certified under the federal medicare or medicaid programs, a complete copy of all cost reports submitted to the medicaid state agency, medicare intermediaries or other state agency administering legislative directed funding. If such a report is not prepared by the facility or organization within a given fiscal year, then it shall file a complete schedule of costs allocated to each category of costs in accordance with standards established by the state medicaid office.~~

~~4.1.6. At statement of all charges, fees or salaries for goods or services rendered to the covered facility or related organization, together with the name and address of each entity providing the goods or services, which exceed in total the sum of fifty five thousand dollars (\$55,000.00) for the reporting period. This requirement does not apply to payments made or due as a result of services rendered to patients, clients or residents to whom the covered facility typically provides services.~~

~~4.1.7. A statement of all charges, fees or other sums collected by the covered facility or related organization for or on account of any person, firm, partnership, corporation or other entity, however structured, together with the name and address of each entity from whom a charge, fee or other sum was collected, which exceeds in total the sum of fifty five thousand dollars (\$55,000.00) during the reporting period. This requirement does not apply to payments made or due as a result of services rendered to patients, clients or residents to whom the covered facility typically provides services.~~

~~4.1.8. If a covered facility, related organization or its parent entity must file a form 10K with the Federal Securities and Exchange Commission, then it shall file a copy of the 10K form with the board on an annual basis.~~

~~4.1.9. A copy of all income tax returns and applicable substitutes (e.g. Form 990) required to be filed by federal and state laws.~~

~~4.1.10. A trial balance for the reporting period. Covered facilities or related organizations~~

~~which are not hospitals, either in whole or in part, shall file a trial balance only if requested to do so in writing by the board. If such a request is made, the covered facility or related organization shall file the trial balance within fifteen (15) days of the board's request.~~

~~4.1.11. A copy of all contracts that the facility or organization enters into with any individual or group of health care providers for the provision of inpatient or outpatient services together with a schedule of rates to be charged by the health care providers for their services under the contract or charged by the covered facility for those services by the provider. Simple admitting privileges to the facility shall not be are not construed as such a contract.~~

~~43.2. The statements, schedules, reports or other information required to be filed pursuant to subsection 43.1 of these rules shall be filed for each individual covered facility or related organization covered by this section. If a covered facility or related organization is a division or subsidiary of another entity which owns or operates other covered facilities or related organizations, the statements, schedules, reports or other information shall be for the specific division or subsidiary and not for the aggregate of the covered facilities or related organizations of such other entity.~~

~~43.3. Every hospital shall also file the following with the board authority:~~

~~4.3.3.1. Within one hundred twenty (120) days after the end of its fiscal year, a copy of the Health Care Cost Review Authority Financial Report (Uniform Reporting System), adopted pursuant to W. Va. Code §16-29B-1724 including the wage and salary survey.~~

~~4.3.3.2. On a monthly basis or at intervals specified by the board, authority, a complete copy of the Uniform Bill-82 (UB-82) (UB) form data for each and every inpatients including medicare and medicaid patients. If the board authority obtains another source for a portion of the data, the board authority may excuse the hospital from providing that portion.~~

~~4.3.3.3. The hospital must submit the UB-82 data for inclusion in the data repository to the board authority or its agent on Industry Standard 1600 BPI tape or similar computer tape, diskette or other electronic transfer means in the format as designated by the board authority at [www.hca.wv.gov](http://www.hca.wv.gov). A hospital shall not submit hard copies of the UB-82 data without the prior approval of the board authority.~~

~~3.4. Every covered facility, except hospitals, will submit upon request the information from subsection 3 from its related organization(s). The statements, schedules, reports or other information required to be filed pursuant to this section shall be filed for each individual related organization requested pursuant to this section and not for the aggregate of the covered facilities or related organizations of such other entity.~~

~~3.5. Every home health agency shall annually submit a utilization survey, as defined in subsection 4.~~

~~**§65-13-54. Exemption. Home Health Utilization Study.**~~

4.1. The authority shall conduct a home health utilization survey to determine unmet need for certificate of need applications. This survey shall be comprised, at a minimum, of utilization of existing providers on a county basis by age cohort. This survey shall be conducted on a statewide basis at least annually and published on the authority's web page, presently at www.hca.wv.gov.

4.2. Every home health agency shall file with the authority the response to the survey within 60 days of receipt of service of the survey. The authority may, for good cause shown, extend the time for filing.

~~5.1. A related organization, as defined in subsection 2.6 of this rule, may receive an exemption from the reporting requirements of the Act and this rule if it meets each of the following requirements:~~

~~5.1.1. The related organization is not a covered facility and is not a health care provider of any type.~~

~~5.1.2. The related organization did not provide to or receive from the covered facility any material service.~~

~~5.1.3. The related organization did not transfer to or receive from the covered facility substantial funds or resources.~~

~~5.1.4. The related organization was not or is not established to provide a substantial benefit to the covered facility, or vice versa, as described in subsection 2.6 of this rule.~~

~~5.2. Any organization seeking an exemption pursuant to this section must file a written request for an exemption with the board within sixty (60) days after the end of its fiscal year. A duly authorized representative of the organization must make the request in writing and the request must contain, at a minimum, the following:~~

~~5.2.1. The identification of the applicant and the nature of its relationship with a covered facility.~~

~~5.2.2. A description of the related organization's purpose, operations, revenues and expenses.~~

~~5.2.3. A statement which establishes that the related organization meets each of the requirements outlined in subsection 5.1. of this rule which would entitle it to such an exemption.~~

~~5.3. Any exemption granted a related organization pursuant to subsection 5.2 of this rule is valid only for the reporting period for which an exemption was granted.~~

### **§65-13-65. Additional Information.**

~~65.1. Whenever further records, data or other information are considered necessary to verify the accuracy of any information set forth in any statement, schedule or report filed by a covered facility or related organization under the provisions of the Act statute or these rules, the ~~board~~~~

authority may require the production of such records, data or other information.

~~6.2. The board may require any covered facility or related organization to file any additional records, data, reports or other information concerning or affecting the costs incurred in rendering health care services by the facility or organization or concerning or affecting the cost of health care services generally in this state.~~

~~6.3. The board authority shall make any request for records, data, reports or other information pursuant to this section in writing, and shall give the covered facility or related organization a minimum of ten (10) days within which to file the requested material.~~

#### ~~§65-13-7. Short Form.~~

~~The form shall develop, on or before the 1st day of October, 1992, a short form by which certain covered facilities may report the information required by section 4 of this rule. The following covered facilities may report on the short form: (a) kidney disease treatment centers (including a free-standing hemodialysis unit); (b) ambulatory health care facilities; (c) ambulatory surgical facilities; and (d) home health agencies.~~

#### ~~§65-13-8. Hearing.~~

~~The board may conduct hearings as part of any investigation it undertakes pursuant to the Act or these rules. The board may subpoena witnesses, papers, records, documents and any other information or data it may require in its investigation. The board may administer oaths or affirmations during the course of such proceedings.~~

#### ~~§65-13-96. Confidentiality.~~

~~9.1.6.1. The board authority and its officers, employees and agents shall maintain the confidentiality of any and all medical or individual information personally identifiable to a patient or a consumer of health services, ~~whether directly or indirectly~~. The ~~board~~ authority may release statistical data or reports based upon these records.~~

~~9.2. Tax returns required to be filed pursuant to subsection 4.1.9 of this rule shall remain confidential, and the board or its officers, employees or agents shall not divulge or make any part known. The board may release statistical data or reports based upon these records.~~

#### ~~§65-13-107. Public Access to Information.~~

Except for those documents held confidential pursuant to section 9 six of these rules, the ~~board~~ authority shall keep all other reports, statements, schedules or other information filed with the ~~board~~ authority pursuant to the ~~Act~~ statute or this rule open to public inspection and examination during the regular business hours of the ~~board~~ authority. The ~~board~~ authority shall make copies of any report, statement, schedule or other information available to the public upon request upon payment of a fee. The ~~board~~ authority may charge its reasonable and customary fees for making copies of any such document. The authority may provide requested aggregate data to an entity.

The authority may charge a fee to an entity to obtain the data but may not charge a fee to a covered entity.

**~~§65-13-11.~~ Injunctions.**

~~If any covered facility or related organization fails to file or publish any report, statement, schedule or other information pursuant to the Act or these rules, the board may request that its general counsel or the office of the attorney general file an action in the circuit court of the county in which the covered facility or related organization is located for the issuance of a mandatory injunction to compel compliance.~~

**~~§65-13-128.~~ Penalties For Failure To Comply.**

The ~~board~~ authority shall notify any covered facility or related organization which fails to ~~make and transmit~~ submit to the ~~board~~ authority any report, statement, schedule or other information required by the ~~Act~~ statute or this rule, ~~or fails to publish or distribute any report as required,~~ of such ~~delinquency failure~~ by certified mail, return receipt requested. If the ~~delinquency failure~~ continues for more than ~~ten~~ (10) days after receipt of the notice, the delinquent facility or organization is subject to a penalty ~~up to one thousand dollars per violation~~ of \$1,000.00 for each day thereafter that the ~~delinquency failure~~ continues. The ~~board~~ authority shall impose the penalty and if the ~~facility or organization~~ covered facility fails to pay the penalty within the time specified by the ~~board,~~ authority, the ~~board~~ authority shall recover the penalty through the attorney general or its general counsel in a civil action filed in the circuit court of the county where the delinquent facility or organization is located. The ~~board~~ authority shall pay any penalty received or recovered into the state treasury to the account of the general fund. The review of any final judgment or order of the circuit court shall be by appeal to the West Virginia Supreme Court of Appeals.

**~~§65-13-139.~~ Severability.**

If any provision(s) of these rules or the application thereof to any entity or circumstance shall be held invalid, the invalidity shall not affect the provisions or applications of this rule which can be given effect without the invalid provision(s) or application and to this end the provisions of these rules are declared to be severable.