

# WEST VIRGINIA

## SECRETARY OF STATE

KEN HECHLER

### ADMINISTRATIVE LAW DIVISION

Form #7

1990 JUL 10 11 25

#### NOTICE OF AN EMERGENCY RULE

AGENCY: Division of Health TITLE NUMBER: 64

CITE AUTHORITY: §§16-1-21, 29-1H-6 and 29B-1-3

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 51

TITLE OF RULE BEING FILED AS AN EMERGENCY: Fees for Services

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

#### THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

In the 1990 session of the Legislature, the general revenue budget allocation for health programs for the fiscal year starting July 1, 1990 was reduced by \$560,000. The Legislature also passed House Bill 4660 allowing the Division of Health and local boards of health to charge fees for services. No individual, however, may be denied health care services because of the inability to pay. Revenue from such fees must be used only for funding health programs.

If the reduction in the general revenue allocation for health programs is not substantially replenished from fees, there will be substantial harm to the public interest because necessary health programs will be reduced or eliminated; therefore, in order for the immediate preservation of the public health, safety, and welfare jeopardized by the reduction or elimination of health programs, this rule is filed on an emergency basis.

As explained in the attached letters from Governor Caperton to Speaker Chambers and President Burdette, the controversial milk, water and sewer fees originally proposed have been deleted. Also included for your information is a fiscal note showing the expected net revenue.

Use Additional Sheets If Necessary.



Taunja Willis Miller, Secretary  
Dept. of Health & Human Resources

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Fees for Services (Emergency Filing)

Type of Rule:  X  Legislative   Interpretive   Procedural

Agency Division of Health Address Building 3, Capitol Complex  
Charleston, W. Va. 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$138,858	\$101,418	\$
Personal Services			67,178	52,428	
Current Expense			59,216	48,990	
Repairs and Alterations			716	0	
Equipment			11,752	0	
Other			0	0	
Estimated State Revenue			520,000*	520,000	

2. Explanation of above estimates: The estimated state cost for billing and collecting fees is based on four additional clerical staff. Also, a percentage of time devoted by the administrative office to implement this rule has been attributed to the personnel costs. For the initial year, furnishings and equipment such as desks, chairs, computer, printer, software, supplies and repair and alteration costs have been added. Thereafter, costs incurred would be reduced administration support, personnel, supplies necessary for processing and postage. The cost involved in charging fees should be more than offset by the fees collected.

\*The revenue estimate is based on the collections that would be made if mechanisms were in place to start collections in July, 1990.

3. Objectives of these rules: To establish fees for services provided by the Division of Health and local health departments in order to allow sufficient funds to be collected to provide necessary public health services including the operation of programs to help assure safe drinking water, that health care facilities are built in accordance with standards, that x-ray equipment is operating properly, that local public health services are available, and that other services are maintained, except individuals unable to pay for health care services will not be charged.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The economic impact on State government of the collection of proposed fees will provide a means to partially restore the amount of funding by which the Division of Health budget was reduced in the 1990-91 budget and allow for the maintenance of public health services at both the State and local health department levels. Although there will be some expense for the billing and collecting of the fees, it is anticipated this expense will be more than offset by the amount collected.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

The appendices to the rule list various types of services for which fees are to be charged and most of the entities which would be charged. In addition, local boards of health may propose fees for services they provide (except persons unable to pay for health care services will not be charged).

C. Economic Impact on Citizens/Public at Large.

The economic impact on the citizens and public at large will be a shift in some health service funding from tax revenues to fees and increased prices if the fees are passed on to consumers.

Date July 10, 1990

Signature of Agency Head or Authorized Representative

Taunja Willis Miller  
Taunja Willis Miller, Secretary  
Department of Health and Human Resources

DATE: July 10, 1990  
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
FROM: Division of Health  
EMERGENCY RULE TITLE: Fees for Services

1. Date of filing: July 10, 1990
2. Statutory authority for promulgating the emergency rule: \$16-1-21, 29-1H-6 and 29B-1-3
3. Date of filing of proposed legislative rule: \_\_\_\_\_
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?  
New language  
\_\_\_\_\_  
\_\_\_\_\_
5. Has the same or similar emergency rule previously been filed and expired?  
No  
\_\_\_\_\_  
\_\_\_\_\_
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.  
See attached filing notice  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

Not applicable

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See attached filing notice

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WEST VIRGINIA DIVISION OF HEALTH  
RULE ABSTRACT  
1990

Title: Fees for Services (Emergency Filing)

CSR Title and Series: 64 CSR 51                      Type: Legislative

Summary: This rule establishes fees for services provided by the Division of Health and establishes a process for adoption of local health department fees in order to allow sufficient funds to be collected to provide necessary public health services including the operation of programs to help assure safe drinking water, that health care facilities are built in accordance with standards, that x-ray equipment is operating properly, that local public health services are available, and that other services are maintained, except individuals unable to pay for health care services will not be charged.

For further information contact: Regulatory Development Section,  
telephone 348-3223.

FILED

1990 JUL 10 AM 10:25

OFFICE OF THE CLERK  
SECRETARY OF STATE

[EMERGENCY]

TITLE 64

WEST VIRGINIA LEGISLATIVE RULES  
DIVISION OF HEALTH

FEES FOR SERVICES

SERIES 51

1990

[EMERGENCY]  
WEST VIRGINIA LEGISLATIVE RULES  
DIVISION OF HEALTH

FEEES FOR SERVICES

64 CSR 51

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[EMERGENCY]  
TITLE 64  
WEST VIRGINIA LEGISLATIVE RULES  
DIVISION OF HEALTH

SERIES 51  
FEES FOR SERVICES

FILED

1990 JUL 10 AM 10:28

DEPT. OF HEALTH & HUMAN SERVICES  
SECRETARY'S OFFICE

§ 64-51-1. General

1.1. Scope - This legislative rule establishes reasonable fees for services provided by the division of health and local boards of health. This legislative rule does not supersede other rules which establish fees for services.

1.2. Authority - §§16-1-21, 29-1H-6 and 29B-1-3

1.3. Filing Date - July 10, 1990

1.4. Effective Date - July 10, 1990

§64-51-2. Application and Enforcement

2.1. Application - This legislative rule applies to persons or entities receiving services from the division of health or local boards of health as created in Chapter 16, Article 2 or Article 2A of the West Virginia Code and to such local boards of health.

2.2. Enforcement - The enforcement of this legislative rule is vested with the administrator of the West Virginia division of health or his or her lawful designee.

§64-51-3. Definitions

3.1. Ambulatory Surgical Facility - A facility which provides surgical treatment to patients not requiring hospitalization. This definition does not include the legally authorized practice of surgery by any one or more persons in the private office of any health care provider.

3.2. Asbestos - The asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite, and which material contains more than one percent asbestos by weight.

3.3. Asbestos Abatement - Procedures to control fiber release from asbestos-containing materials. These procedures include removal, encapsulation, enclosure, repair, demolition, renovation, and similar activities.

3.4. Behavioral Health Center - An organization that provides behavioral health services, including all of its locations.

3.5. Behavioral Health Services - Those services intended to help individuals gain or regain the capacity to function adap-

tively in their environment, to care for themselves and their families, and to be accepted by society. This includes individuals with emotional or mental disorders, alcohol or drug abuse problems, and mental retardation or other developmental disabilities.

3.6. **Bottled Water** - Any natural or artificial mineral, spring, well, distilled or other water bottled or containerized for use primarily as drinking water.

3.7. **Director** - The director (or administrator) of the West Virginia division of health.

3.8. **Drinking Water** - Water free from biological, chemical, physical and radiological contaminants which cause disease or harmful physiological effects.

3.9. **Generator** - A person whose activity results in the production of low-level radioactive waste requiring long-term storage and disposal.

3.10. **Hospital** - Any institution, place, building or agency in which an accommodation of five or more beds is maintained, furnished or offered for the hospitalization of the sick or injured.

3.11. **Innovative/Alternative Type Sewage System** - A method of sewage disposal for a single family dwelling or establishment for which design standards have been prepared and listed in the West Virginia board of health interpretive rules as an innovative or alternative system.

3.12. **Local Board of Health** - A county, municipal, or combined board of health created under West Virginia Code, Chapter 16, Articles 2 or 2A.

3.13. **Low-Level Radioactive Waste** - Radioactive waste that:

a. Is neither high-level waste or transuranic waste, nor spent nuclear fuel, nor by-product material as defined in Section 11(e)(2) of the Atomic Energy Act of 1954 [42 U.S.C. §2014(e)] as amended; and

b. Is classified by the federal government as low-level waste, consistent with existing law; but does not include waste generated as a result of atomic energy defense activities of the federal government, as defined in Public Law 96-573 [42 U.S.C. §2021b], or federal research and development activities.

3.14. **Municipal Sewer System** - A system or group of systems as a whole which receives sewage from more than one dwelling or establishment and is operated and maintained by an incorporated municipality, or public service district, or sanitary board.

3.15. **Nursing Home** - Any institution, residence or place, or any part or unit thereof, however named, which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than twenty-four hours, for three or more persons who are ill or otherwise incapacitated and in need of extensive on-going nursing care due to physical or mental impairment, or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation.

3.16. **Permit** - As used in this rule, a written document issued by the director giving a designated person permission to:

a. construct, operate, alter, or renovate a specific public water system, or bottled water plant;

b. construct, install, extend, alter or operate an approved sewer system, or method of sewage disposal or to collect, remove, transport or dispose of sewage; or

c. construct, alter or renovate a swimming pool or to operate such facility.

3.17. **Person** - An individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency or any other entity recognized by law.

3.18. **Personal Care Home** - Any institution, residence or place, or any part or unit thereof, however named, which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and personal assistance, for a period of more than twenty-four hours, to three or more persons who are dependent upon the services of others by reason of physical or mental impairment but who do not require extensive, on-going nursing care.

3.19. **Public Sewer System** - A sewage collection system or systems with or without treatment facilities and serving more than one dwelling or establishment. Ownership of the system is held by and maintenance performed by a single entity. This definition includes municipal sewer systems.

3.20. **Public Water System** - A public water system is any water system or supply which regularly supplies or offers to supply piped water to the public for human consumption, if serving at least an average of twenty-five individuals per day for at least sixty days per year, or which has at least fifteen service connections, and shall include: (1) any collection, treatment, storage, and distribution facilities under the control of the owner or operator of such system and used primarily in connection with such system, and (2) any collection or pretreatment storage

facilities not under such control which are used primarily in connection with such system. A public water system shall not include a system which meets all of the following conditions: (1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities); (2) which obtains all of its water from, but is not owned or operated by a public water system which otherwise meets the definition; (3) which does not sell water to any person; and (4) which is not a carrier conveying passengers in interstate commerce.

3.21. **Residential Board and Care Home** - Any institution, residence or place, or any part thereof, however named, which is advertised, offered, maintained or operated by the ownership or management, whether for consideration or not, for the express or implied purpose of providing accommodations and personal assistance, for a period of more than twenty-four hours, to no fewer than three and no more than eight persons who are dependent upon the services of others by reason of physical or mental impairment but who are capable of self-preservation and do not require nursing care.

3.22. **Sewage** - Any excreta or liquid waste containing animal, vegetable, or mineral matter in suspension or solution including, but not limited to, waste from water closets, urinals, lavatories, bathtubs, laundry tubs, washing machines, drinking fountains, sinks, kitchen equipment, and other sanitary fixtures or facilities.

3.23. **Sewage Holding Tank** - A watertight receptacle designed and constructed to receive and retain untreated or partially treated sewage on a temporary basis. This does not include septic tanks, portable toilets or privies.

3.24. **Swimming Pool** - Any artificial basin, chamber, or tank used or intended to be used by the public for swimming, diving or recreational type bathing. The term "swimming pool" does not include baths where the main purpose is cleaning the body, nor individual type therapeutic tubs or tanks. Swimming pools are classified according to the following:

a. **Recirculation Type** - A pool from which the water is withdrawn, treated, and returned to the pool;

b. **Fill and Draw Type** - A pool to which water is added, used for a period, then discarded; and

c. **Flow Through Type** - A pool to which water is added continuously thereby replacing and causing water to overflow to waste.

3.25. **Water Well** - Any excavation or penetration in the ground, whether drilled, bored, cored, driven or jetted that enters or passes through an aquifer for purposes that may include, but are not limited to: a water supply, exploration for

water, dewatering or heat pump wells, except that this definition shall not include ground water monitoring activities and all activities for the exploration, development, production, storage and recovery of coal, oil and gas and other mineral resources which are regulated under chapters 22, 22A or 22B of the code of West Virginia.

#### **§64-51-4. Fees Generally**

4.1. **Authority to Assess and Collect Fees** - The director of the division of health and local boards of health may assess and collect the fees listed herein and in the appendices to this legislative rule for the provision of services. Except as exempted in §§4.2, 5.2 and 9.3 of this rule, the director and local boards of health may require payment of fees in advance for services.

4.2. **Exemption from Fees Generally** - No individual may be denied health care services because of the inability of the individual to pay for services when services are provided to similarly situated individuals who have the ability to pay for them.

4.3. **Fees for Copies of Public Records** - Copies of public records which may be disclosed may be furnished at a charge of 25¢ per page on 8½ X 11" or 8½ X 14" paper. Copies of documents produced on larger paper shall be furnished at actual cost, which includes but is not limited to materials, operator's time, and transportation and delivery charges. Copying fees may be required to be paid before issuance of the copies.

4.4. **Fee for Record Searches and Compilation of Information** - Requests for information estimated to require more than ten minutes to search records or to compile may be charged at the rate of \$25.00 per hour, and payment may be required before issuance of the information.

4.5. **Fee for Address Label Printing** - When the service provided is printing mailing labels of licensees, permit holders, or other persons, the fee shall be at the rate of 10¢ per label.

#### **§64-51-5. Laboratory Service Fees**

5.1. **Laboratory Services for Which a Fee May be Charged** - Except as exempted in §5.2 of this rule, the director may charge a fee for each test or group of tests listed in Appendix I for bacteriological and chemical analyses of environmental potable water samples.

5.2. **Exemption from Laboratory Fees** - Fees shall not be charged when:

a. Laboratory tests are authorized by the director as part of an epidemiological investigation or the charging of the fee would significantly and adversely affect the public health;

b. Tests on second or additional specimens are required by the director because of the inability to make or complete a test, or because the testing operation or procedure is unsatisfactory for any reason;

c. Specimens are deemed unsatisfactory for testing at the time of submission; or

d. The exemption of fees provision of Section 4.2 of this rule applies.

**§64-51-6. Environmental Health Services Fees**

The director may charge a fee for each environmental health service listed in Appendix II.

**§64-51-7. Health Facility Fees**

The director may charge a fee for each service provided to health facilities listed in Appendix III.

**§64-51-8. Epidemiology and Health Promotion Fees (Reserved)**

**§64-51-9. Procedure for Establishment of Fees for Services Provided by Local Boards of Health**

9.1. Definitions - For purposes of this section, the following terms are defined:

9.1.1. Health Programs - Community-oriented strategies and activities devised by a local health department to address an identified community health problem, the solution of which will lower a morbidity or mortality statistic.

9.1.2. Professional Health Services - Therapeutic interventions of assessment, counseling, screening, diagnosis or treatment of health problems by physicians, physician's assistants, dentists, registered nurses, dieticians, health educators, master's prepared social workers or other currently licensed health care professionals in the state of West Virginia and employed by the local health departments.

9.1.3. Sliding Fee Scale - A set of varying amounts (percentages of the maximum fee) to be charged for services to individuals receiving varying levels of income. Such varying charges shall be based on annual federal poverty level guidelines as published by the division of health for other programs or an alternative system proposed by a local board of health for providing services at a reduced fee based on an individual's ability to pay.

9.2. Services for Which a Local Board of Health May Propose Fees - Except as exempted below, a local board of health may propose fees for all its services, including but not limited to

professional health services, screenings, injections, assessments, counseling done for health-related issues, classes which teach healthy habits, lifestyles, or maintenance of health when there is a preexisting disease condition present, case management on behalf of patients whether in the home, clinic or through written and oral communications by letter or phone, and inspections.

9.3. **Exception from Local Board of Health Fees** - The public health mission to provide first for general community safety means fees for service will not be charged to individuals in the following circumstances:

a. In the case of a community epidemic, natural disaster, civil upheaval, toxic contamination, and other like situations where common good is at issue;

b. In the case of individuals seeking medical evaluation, treatment or epidemiologic follow-up including administrative cost associated with sexually transmitted disease, tuberculosis and immunization services; and

c. In the case of transient, migrant, homeless or other individuals with or without children who state they are too poor to pay, or

d. In the case where the exemption from fees provision of Section 4.2 of this rule applies.

9.4. **Persons Who May Be Charged a Fee** - Local board of health charges may be made of those who are able to pay and of third party payors.

9.5. **Basis for Fees** - Local board of health maximum fees may be based on cost plus a maximum of fifteen percent for administrative overhead which may include but is not limited to personnel wages and salaries, ordering and storage of supplies, transportation, paper work processing and storage, and facility overhead such as janitorial and utility costs.

9.6. **Fee Proposals By Local Boards of Health** - A local board of health proposing to charge fees under this rule shall approve a budget plan and program document including:

a. Proposed health programs as defined in Section 9.1.1 of this rule;

b. An accounting of fee collections in the previous fiscal year, in the current fiscal year, and projected fee collections in the remainder of the current fiscal year and during the next fiscal year;

c. A proposed schedule of fees; and

d. A proposed sliding fee scale which will be implemented by the local board.

9.7. **Posting of Proposed Fees** - After a local board of health's adoption of a proposed schedule of fees and sliding fee scale, the board shall post, publish or otherwise inform the public living in the area served by the board of such proposal and allow for a thirty day comment period.

9.8. **Submission of Proposal for Approval** - A local board of health proposing to charge fees shall submit to the director of the division of health:

a. A budget plan and program document including the information required in Section 9.6 of this rule;

b. A copy of the posted notice of such proposed fees and a description of the public notice process;

c. A copy of comments received on the proposed fees; and

d. A response to such comments.

9.9. **Emergency Fees** - Establishment of fees other than in accordance with Section 9.8 above may be accomplished only upon petition by the local board of health to the director of the division of health in response to an emergency.

9.10. **Approval of Fees of Local Boards of Health** - The director of the division of health shall approve or reject a local board of health's budget plan and program document and fees proposed. If there is a rejection, the local board of health shall be allowed to propose a revision. Approval by the director of the proposed fees shall be in the form of an order filed with the secretary of state as an appendix to this rule, and the local board of health may charge the approved fees upon such filing. The director shall provide a copy of such order to the local board of health.

9.11. **Notice of Free Care** - Signs must be prominently displayed in a public health clinic in as many languages as a substantial number of patients speak, as well as signs in pictures for those who do not read, that inform the public that immunization, sexually transmitted disease, tuberculosis, and other services in the public health clinic may not be denied for inability to pay.

9.12. **Local Board of Health Account** - All local board of health fees collected together with accounting documentation will be deposited with the treasurer of the county or municipality and used only for funding local board of health programs.

9.13. **Annual Audits** - Local boards of health are subject to annual audits by the state tax commissioner under West Virginia

Code, Chapter 6, Article 9, Section 7.

**§64-51-10. Administrative Due Process** - Those persons adversely affected by the enforcement of these legislative rules desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the Rules of Procedure for Protested Case Hearings and Declaratory Rulings, West Virginia Board of Health Procedural Rules, 64 CSR 1. In the case of a request for a hearing on a local board of health fee, the director may direct the local board of health to conduct the hearing.

**§64-51-11. Severability** - The provisions of this rule are severable. If any provisions of this rule are held invalid, the remaining provisions shall remain in effect.

## Appendix I - Laboratory Service Fees

## Fees for Environmental Chemistry Laboratory Service:

## 1. Inorganic Chemicals/Miscellaneous Individual Tests:

Arsenic	\$10.00
Barium	10.00
Cadmium	10.00
Chromium	10.00
Lead	10.00
Selenium	10.00
Silver	10.00
Mercury	12.00
Iron	12.00
Manganese	12.00
Copper	12.00
Zinc	12.00
Sodium	12.00
Calcium	12.00
Magnesium	12.00
Surfactants	12.00
Potassium	12.00
Aluminum	12.00
Nitrate	10.00
Fluoride	8.00
Alkalinity Methyl Orange/ Phenolphthalein	4.00
Chlorides	4.00
Hardness	4.00
pH	4.00
Total Dissolved Solids	4.00
Sulfates	12.00
Conductivity	8.00
Chlorine Residual: Free	8.00
Chlorine Residual: Total	8.00
Hydrogen Sulfide	12.00
Turbidity	5.00

2. Tests to meet Environmental Protection Agency Minimum inorganic compliance requirements for public water supplies - arsenic, barium, cadmium, chromium, fluoride, lead, mercury, selenium, silver, and nitrates:

\$100.00

3. Tests to meet West Virginia Secondary contaminants compliance requirements for public water supplies - pH, copper, manganese, sodium, aluminum, alkalinity, hardness, iron:

72.00

## 4. Organic Chemicals:

Pesticides

175.00

Endrin  
Lindane  
Methoxychlor  
Toxaphene

Herbicides	175.00
2,4-Dichlorophenoxyacetic Acid (2,4D)	
2-(2,4,5-Trichlorophenoxy) Propionic Acid (2,4,5-TP/Silvex)	

Fees for Environmental Microbiology Laboratory Service:

1. Water specimens	10.00
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Fees for Laboratory Certification:

1. Drinking Water

Certification to perform laboratory testing on water to meet state and Environmental Protection Agency requirements under the Safe Drinking Water Act.

A. Chemical Testing	
Inorganic Tests	500.00
Trihalomethanes and Volatile Organic Compounds	500.00
All Other Organic Tests	500.00
Laboratories located outside the borders of West Virginia will be assessed the certification fee for the test(s) approved and will be required to pay all reasonable expenses required for an on-site inspection.	
B. Microbiological Testing	500.00

## Appendix II - Environmental Health Services Fees

1.	Water, Sewage Systems, Swimming Pools -	
	A. Construction/Installation Permits	
	Public Water System Project	\$ 300.00
	Public Sewer System or Facility Project	300.00
	Public Swimming Pool Project	200.00
	Sewage Holding Tank Project	1,000.00
	On-Site Innovative/Alternative Type Sewage System	150.00
	B. Water Well Permits (New Construction)	
	Public Water System	150.00
2.	Bottled Drinking Water/Water Vending Machine Permits	
	Producers and Distributors, Annually	100.00
	Vending Machines, Annually	100.00
	plus per machine	10.00
3.	Diagnostic X-Ray Machine Registration	
	A. Hospital	
	first tube/each additional tube	225.00/20.00
	B. Dental	
	first tube/each additional tube	55.00/20.00
	C. Other (e.g., ambulatory healthcare facilities, ambulatory surgical facilities, mobil vans, schools, offices of chiropractors, physicians, podiatrists and veterinarians) -	
	first tube/each additional tube	175.00/20.00
4.	Asbestos Abatement	
	A. Training Accreditation	
	Course Approval	
	per discipline/maximum	1000.00/3000.00
	Review Course Approval	500.00

## B. Notification - Inspection of Projects

Class I		
10-100 linear ft. or 50-200 sq. ft.	\$	50.00
Class II		
101-1000 linear ft. or 201-2000 sq. ft.		200.00
Class III		
1001-3000 linear ft. or 2001-4000 sq. ft.		500.00
6. Annual Low-Level Radioactive Waste Generator or Storer Fee (Maximum)		12,500.00

## Appendix III - Maximum Health Facility Fees

## 1. Site Inspections for New Construction or Major Renovation

A. Hospitals	\$300.00
B. Ambulatory Surgical Centers	250.00
C. Nursing Homes	300.00
D. Personal Care Homes	250.00
E. Residential Board and Care Homes	150.00
F. Behavioral Health Center Locations	150.00

## 2. Architect's Review of Plans

A. Hospitals	
New Hospitals and Major Additions	500.00
Minor Additions and Renovations	300.00
B. Ambulatory Surgical Centers	300.00
C. Nursing Homes	
New Homes and Major Additions	350.00
Minor Additions and Renovations	200.00
D. Personal Care Homes	
New Home and Major Additions	250.00
Minor Additions and Renovations	150.00
E. Residential Board and Care Homes	150.00
F. Behavioral Health Center Group Homes	150.00
G. Overtime Review Requested by Facility (per hr.)	50.00

## 3. Inspection of New Projects Prior to Opening

A. Hospitals	300.00
B. Ambulatory Surgical Centers	250.00
C. Nursing Homes	300.00
D. Personal Care Homes	250.00
E. Residential Board and Care Homes	150.00
F. Behavioral Health Center Locations	150.00



STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON 25305

June 27, 1990

GASTON CAPERTON  
GOVERNOR

The Honorable Robert Chambers  
Speaker  
West Virginia House of Delegates  
State Capitol, Room 229  
Charleston, West Virginia 25305

Dear Speaker Chambers:

Recently there has been considerable concern voiced about two emergency rules proposed by the Department of Health and Human Resources relating to fees for services. I believe these concerns are legitimate. Consequently, the Department will take the following actions on these proposed fees.

The Department will modify Series 51, Fees for Services. Based upon comments received from legislators and citizens it appears these rules exceeded legislative intent under House Bill 4660 passed last session. The Department will delete all sections related to milk fees and technical services fees and operating permits for water and sewage. Based on the comments received, the Department feels this will eliminate the concerns about this rule. If further problems arise, the Department is prepared to make additional adjustments. Action on the deleted sections will not occur without concurrence of the legislative leadership.

The second rule, Series 30, Fees for Permits is a modification to existing rules adopted by the legislature under WV Code Section 16-2A-6. This rule was approved for adoption by the Board of Health on Friday, June 15, 1990. It will not be filed for emergency adoption on July 1, 1990. Instead, I have asked Secretary Willis Miller to personally review this rule. Following that review, she will discuss her proposed action with each of you prior to proceeding.

I trust these actions will adequately address your concerns.

Sincerely,

A handwritten signature in black ink that reads "Gaston Caperton".  
Gaston Caperton  
Governor

GC:sh

cc: Taunja Willis Miller



STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON 25305

June 27, 1990

GASTON CAPERTON  
GOVERNOR

The Honorable Keith Burdette  
Senate President  
State Capitol, Room 229  
Charleston, WV 25305

Dear President Burdette:

Recently there has been considerable concern voiced about two emergency rules proposed by the Department of Health and Human Resources relating to fees for services. I believe these concerns are legitimate. Consequently, the Department will take the following actions on these proposed fees.

The Department will modify Series 51, Fees for Services. Based upon comments received from legislators and citizens it appears these rules exceeded legislative intent under House Bill 4660 passed last session. The Department will delete all sections related to milk fees and technical services fees and operating permits for water and sewage. Based on the comments received, the Department feels this will eliminate the concerns about this rule. If further problems arise, the Department is prepared to make additional adjustments. Action on the deleted sections will not occur without concurrence of the legislative leadership.

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Gaston Caperton  
Governor

GC:sh  
cc: Taunja Willis Miller



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Building 3, Capitol Complex  
Charleston, WV 25305

Gaston Caperton  
Governor

July 16, 1990

1990 JUL 16 PM 1:44  
OFFICE OF THE SECRETARY OF STATE  
FILED

The Honorable Ken Hechler  
Secretary of State  
State Capitol Building  
Charleston, West Virginia 25305

Dear Secretary Hechler:

This letter concerns the Fees for Services rule filed in your Office on an emergency basis on July 12, 1990 by the Division of Health of the Department of Health and Human Resources. The purpose of this letter is to provide the additional information requested by your Office regarding the Department's interactions with members of the Legislature about this rule subsequent to the public hearing held on June 22, 1990.

Since the public hearing, I have personally discussed their objections to the rule as it was proposed for hearing with a number of Senators and Delegates. During the session, I met individually with Senator Craigo, Senator Holliday and Senate President Keith Burdette, but not until after the Senate had decided to write your Office concerning the rule and were actually in the process of signing the letter received by Secretary Hechler. I also spoke again with President Burdette and Delegate Pat Murphy last week.

The criticisms of the rule expressed by legislators to me dealt with the proposed fees relating to: milk laboratory testing, permits and products; and the operation of and technical assistance to water and sewage systems based on volume. These controversial items have been deleted from the emergency rule. It is my understanding, based on the above-reported conversations, that the deletion of these very controversial fees make the rule acceptable. I have attached for your information a letter sent to President Keith Burdette and Speaker Chuck Chambers regarding revisions to this rule.

Although the Department has not completed its in-depth study of the rule and all comments received, a number of other fees originally proposed which received a substantial amount of criticism have either been deleted or reduced for the purpose of the emergency filing. As you can see from a comparison of the emergency rule and the public hearing version, fees for water system operators, water well drillers, plumbers and other installers and

The Honorable Ken Hechler  
July 16, 1990  
Page 2

testers, home owner water well drilling permits, certain food-related operations and others have been deleted. Fees relating to asbestos and dental x-rays have been revised and the concept of a maximum fee has been introduced for health facility construction related activities. Additionally, the public comment process regarding the establishment of fees for services at the county level has been strengthened.

It is the Department's belief that the emergency rule filed in your Office not only satisfies legislative concerns, but also omits a number of other controversial proposals. No future actions will be taken by the Department on these controversial issues without legislative review through the routine rule-making process.

I hope that this letter will assist you in deciding to accept the emergency filing. If I can be of further assistance to you, please let me know.

Sincerely,



Raymona A. Kinneberg  
Deputy Secretary

RAK/kpg  
Attachment

cc: Taunja Willis Miller



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Building 3, Capitol Complex  
Charleston, WV 25305

Gaston Caperton  
Governor

July 12, 1990

The Honorable Keith Burdette  
President, West Virginia State Senate  
State Capitol Complex  
Building 1, Room 229  
Charleston, West Virginia 25305

The Honorable Robert "Chuck" Chambers  
Speaker, West Virginia House of Delegates  
State Capitol Complex  
Building 1, Room 234  
Charleston, West Virginia 25305

Re: Board of Health Series 30 Rules and  
Division of Health Series 51 Rules

Dear President Burdette and Speaker Chambers:

As indicated in the Governor's June 27, 1990 letter to you, I have personally reviewed the proposed modification to the existing Series 30 Rules of the Board of Health. In doing so, I also reviewed the comments made regarding the rules. Although several concerns were expressed, the primary concern involved the proposal of a \$5 maximum fee for any food handler. Those concerns centered around cost and administrative requirements for a large pool of employees with a high turnover rate. On the other hand, several local health departments expressed a serious need for the rules to be adopted as soon as possible, because they need the other, increased permit fees to perform some basic services. Consequently, I propose not to sign the rules as submitted but to request the Board of Health to reconsider the rules without the food handler permit fee at a meeting on July 20, 1990. Assuming the revised rules are approved by the Board of Health, we would file them as emergency rules on July 23, 1990. A copy of the rules I propose to submit to the Board of Health is enclosed. One additional change to the rules enclosed may be proposed to the Board of Health by our Office of Environmental Health. The enclosed rules add to the existing Series 30 Rules a permit for modification to individual on-site or innovative or alternative type of sewage facility. Because modification is extremely hard to define and, thus, monitor, the Office may ask the Board to remove the provision from the proposed rules. Please let me know if the revised Series 30 Rules and our proposed actions are acceptable or if you have other suggestions.

Also enclosed is a copy of the Series 51 Rules of the Division of Health, as modified in accordance with the Governor's June 27 letter. The confusion and concern regarding the proposed rule was caused by miscommunications on our

The Honorable Keith Burdette  
The Honorable Robert "Chuck" Chambers  
Page Two  
July 12, 1990

Re: Board of Health Series 30 Rules and  
Division of Health Series 51 Rules

part. All discussions regarding the Series 51 Rules in which either Raymona Kinneberg or I was involved contemplated only making up the amount by which general revenue funding for the services had been reduced. This, of course, is consistent with the Legislature's understanding. Like several other State programs, however, the Division of Health's water program has recently been criticized by the Environmental Protection Agency. To address EPA's concerns, the Office of Environmental Health within the Division increased the proposed fees. They anticipated using the revenues generated by the fees over and above those needed to replace general revenues to improve the water program. Consequently, it is true that the fees would have resulted in monies in excess of the budget decrease. It is also true, however, that the excess monies would have been spent on water programs and not used for other purposes within the Department. Regardless, we deleted sections related to milk fees, technical services fees and operating permits for water and sewage before filing the Series 51 Rules. Joe Schock, the Director of our Office of Environmental Health, is establishing a work group of persons within and outside the Division to address the need for increased funding in the water program. We will, of course, not make any final decisions without your concurrence.

Again, I apologize for any confusion and concern these two rules caused. I believe we have been able to reach at least temporary solutions satisfactory to most of the parties. In addition, we have focused on those areas needing additional discussion and attention. Please let me know if you have any questions or concerns.

Very truly yours,



Taunja Willis Miller, Secretary  
Department of Health and Human Resources

TWM/jah

Enclosures

cc: The Honorable George Farley  
The Honorable Earl Ray Tomblin  
Tom Heywood  
✓ Raymona Kinneberg  
Joe Schock

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 345-4000  
Corporations: 342-8000



STATE OF WEST VIRGINIA  
SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

SHEREE COHEN  
Special Assistant

(Plus all the volunteer  
help we can get)

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE July 18, 1990  
ADMINISTRATIVE LAW DIVISION

July 18, 1990

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Health

RULE: New Rule, Series 51, Fees for Services

DATE FILED AS AN EMERGENCY RULE: July 10, 1990

DECISION NO. 21-90

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

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

KEN HECHLER  
Secretary of State

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 345-4000  
Corporations: 342-2000



STATE OF WEST VIRGINIA  
SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

SHEREE COHEN  
Special Assistant

(Plus all the volunteer  
help we can get)

DECISION                      EMERGENCY RULE DECISION  
(ERD 21-90)

AGENCY: Division of Health  
RULE: New Rule, Series 51, Fees for Services  
FILED AS AN EMERGENCY RULE: July 10, 1990

- par. 1 The Division of Health has filed the above new rule as an emergency.
- par. 2 West Virginia Code §29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Division of Health filed this emergency rule with supporting documents with the Secretary of State on July 10, 1990 and with the LRMRC on July 10, 1990.

par. 7 It is the determination of the Secretary of State that the Division of Health has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §16-1-21 reads in part:

*(d) The administrator of the division of health shall promulgate rules in accordance with §29A-3-1 et seq. of this code, setting forth the fees established, assessed, charged, authorized or approved by the administrator.*

par. 9 The WV Code further states in §29-1H-6:

*§29-1H-6. Rules and regulations.*

*The director of health is authorized to promulgate and adopt rules and regulations as are necessary and incidental to the carrying out of the Compact and this article. Such authorization shall include, without limitation, rules and regulations necessary and incidental to carrying out subsection two, section (g) article three of the Compact. Such rules and regulations shall be promulgated only in accordance with §29A-3-1 et seq. of this code.*

par. 10 It is the determination of the Secretary of State that the Division of Health has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

*(g) 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 essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 13 The facts and circumstances as presented by the Authority are as follows:

In the 1990 session of the Legislature, the general revenue budget allocation for health programs for the fiscal year starting July 1, 1990 was reduced by \$560,000.00. The Legislature also passed House Bill 4660 allowing the Division of Health and local boards of health to charge fees for services. No individual, however, may be denied health care services because of the inability to pay. Revenue from such fees must be used only for funding health programs.

If the reduction in the general allocation for health programs is not substantially replenished from fees, there will be substantial harm to the public interest because necessary health programs will be reduced or eliminated; therefore, in order for the immediate preservation of the public health, safety and welfare jeopardized by the reduction or elimination of health programs, this rule is filed on an emergency basis.

par. 14 In its 1990 session, the West Virginia Legislature passed H.B. 4660 which allowed the Division of Health to establish fees that would be charged for services. This was done to help the division offset a \$560,000 budget cut that was passed in the same session. A copy of §16-1-21, which contains the operative language passed by the legislature, is attached to this decision as Exhibit 1. This new section of the code took effect on July 1, 1990 and its provisions explicitly provide the division "shall promulgate rules in accordance with article three, chapter twenty-nine-a of this code, setting forth the fees established, assessed, charged, authorized or approved by the administrator." (See §16-1-21(d) There are no limits placed on the ability of the division to submit emergency rules in order to implement this section. Since this section took effect on July 1, the division was empowered by this section to promulgate "reasonable" rules under this section of the code.

par. 15 During its extraordinary session in June of 1990, several members of both houses of the legislature submitted a petition to the Secretary of State's office expressing their concern about the proposed fees rule that the Division of Health had submitted and urging this office not to approve the proposed fee rule as an emergency rule. (See Exhibits 2 and 3.) The petitions submit that there are no grounds for granting emergency rule status to this rule. The Administrative Procedures Act provides that "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 the code or by a federal statute or regulation or to prevent substantial harm to the public interest." (Emphasis added) (See §29A-3-15 of the West Virginia Code.) By establishing July 1, 1990 as the effective date of §16-1-21, the legislature gave the Division of Health no choice but to use the emergency rule provisions of the Administrative Procedures Act to implement this portion of the code. By using the legislative rulemaking process, the Division of Health would have to wait until the end of the 1991 session of the legislature to put the fees required by this section into place. I find that the Division of Health was operating under a time limitation established by the legislature in its passage of H. B. 4660. If the legislature passes rulemaking authority in the future, and wishes to withhold the use of emergency rulemaking to implement a program, it should provide such a limitation in the language of the law.

- par. 16 I have reviewed the written comments submitted to the Division of Health in response to the proposed version of this rule as well as several letters that have been directly submitted to this office. It seems that the Division of Health has removed the most controversial portions of this rule. Also, I understand that the staff of the Division of Health met with members of the State Senate after the submission of the petition and that portions of the rule were deleted as a response to that meeting and public comment. (See Exhibit 4.)
- par. 17 It is the determination of the Secretary of State that this proposal qualifies under the definition of emergency as a "time limitation."
- par. 18 This decision shall be cited as Emergency Rule Decision 21-90 or ERD 21-90 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Division of Health, the Attorney General and the Legislative Rule Making Review Commission.

  
\_\_\_\_\_  
KEN HECHLER  
SECRETARY OF STATE

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE

Entered \_\_\_\_\_ THIS DATE \_\_\_\_\_  
ADMINISTRATIVE LAW DIVISION

(a) Notwithstanding any other provisions of this chapter, the administrator of the division of health may assess and charge reasonable fees for the provision of services provided by the division of health: Provided, That no individual may be denied health care services because of the inability of the individual to pay for services when services are provided to similarly situated individuals who have the ability to pay for them. Payments of fees shall be deposited into a special revolving fund in the state treasury.

(b) Any balance including accrued interest in the special revolving fund at the end of any fiscal year shall not revert to the general revenue fund but shall remain in the fund for use by the administrator of the division of health for funding health programs in the ensuing fiscal years.

(c) The administrator of the division of health may authorize reasonable fees for the provision of services by county or municipal boards of health as created in article two or article two-a of this chapter: Provided, That no individual may be denied health care services because of the inability of the individual to pay for services when services are provided to similarly situated individuals who have the ability to pay for them. Payments of fees shall be deposited into the local board of health account for use by the local board of health for funding health programs. The fees established will be created on

a sliding fee basis determined by an individual's ability to pay: Provided, however, That the board of health may submit a request through the administrator for third party reimbursement where such request is appropriate: Provided further, That boards of health which establish such fees shall annually submit a schedule of fees, a sliding fee scale and an accounting of amounts collected to the administrator of the division of health for approval on an annual basis.

(d) The administrator of the division of health shall promulgate rules in accordance with article three, chapter twenty-nine-a of this code, setting forth the fees established, assessed, charged, authorized, or approved by the administrator.

NOTE: THIS SECTION WAS ENACTED OR AMENDED BY THE 1990 REGULAR SESSION AND WILL NOT BE IN EFFECT IN THIS FORM UNTIL JULY 1, 1990.



EXHIBIT 2

HOUSE OF DELEGATES  
WEST VIRGINIA LEGISLATURE  
STATE CAPITOL  
CHARLESTON 25305

June 25, 1990

FILED  
JUN 26 AM 3:15  
STATE CAPITOL  
CHARLESTON, W. VA.

The Honorable Ken Hechler  
Secretary of State  
State Capitol  
Charleston, West Virginia 25305

Dear Secretary Hechler:

We urge you to deny any request from the Division of Health and Human Resources to implement the provisions of Draft Rule 51 on an "emergency" basis. We do not believe any urgency exists.

It is our belief that the proposed fees based on water and sewer usage are contradictory to the provisions of H.B. 4660. Further review by the Legislature is necessary to insure that these proposed fees are within the intent of the Legislature and do not become another burdensome tax upon the utility users and businesses of this State.

Your consideration of this request will be greatly appreciated.

Mary Pearl Compton  
Carol Ann Tice  
Dorothy Wallace  
Chris G. Leggett  
Lydia Hong  
Jany Sanchez  
Paul E. Miller  
Fred Redinger  
James W. Smith  
Donald L. Stimpke  
A. F. Sweet

Very truly yours,  
Sammy D. Dalton Sam Lane  
Robert A. Schradler  
Ray E. Shores  
Robert H. Cole  
Stephen M. Carr  
Eugene Wilson  
Dale Riggs  
Frank Deem  
William J. DeWitt

Bob Ashley

Sam Jones

Ed Miller

~~Troy Evans~~

Delores H. Cook

Tom Farnam

Virginia J. Starcher

Brian Galt

Ray Jones

William R. Wooten

Margaret D. Miller

~~Tom Farnam~~  
Joseph Minard

Evelyn E. Richards

Robert W. Galt

Phyllis Auer

J. Whitcomb

James E. Hillison

Paul Skel

Stephen Hillison

James J. Power

Ramona Corra

J. H. Morgan

J. R. Whitman

Delores J. H. H. H.



KEITH BURDETTE  
PRESIDENT

EXHIBIT 3

THE SENATE OF WEST VIRGINIA  
OFFICE OF THE PRESIDENT  
CHARLESTON 25305

June 26, 1990

Honorable Ken Hechler  
Secretary of State  
Building 1, Suite 157-K  
Charleston, West Virginia 25305

Dear Secretary Hechler:

It has come to our attention that the Division of Health and the State Board of Health intend to file on July 1, 1990, two emergency rules with the Secretary of State relating to fees for services. We are specifically referring to Series 30, Fees for Permits proposed by the Board of Health and Series 51, Fees for Services proposed by the Division of Health.

We are not convinced that an emergency exists justifying the promulgation of the proposed emergency rules. W.Va. Code §29A-3-15 states that "an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare...or to prevent substantial harm to the public interest." The services for which fees are being established have been and are currently being provided by the various boards of health and the Division. We believe that the proposed rules are not necessary for the preservation of the public health, safety or welfare nor would there be substantial harm to the public interest if these rules were not put into effect immediately, but rather were reviewed by the Legislature through the regular rule-making process prior to implementation.

Therefore, we urge you to refuse to accept the proposed emergency rules on the basis that an emergency does not exist and that substantial harm may be inflicted on those persons subject to the fees if an emergency rules is put into effect.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith Burdette".

Keith Burdette  
Senate President

and Members of the West Virginia  
State Senate

Honorable Ken Hechler  
Page 2  
June 26, 1990

~~Charles & Stella A.~~  
~~James M. Trent~~  
~~Martha D. Wehler~~  
~~John & Cheryl~~  
~~John & Cheryl~~  
Dorothy Bell Shupe  
Carl Ray Tomlin  
Tommy E. Whitlow  
Frederick L. Parker  
A. Jack Hogan  
P. W. H. H.  
M. Jay Wolfe  
~~John~~  
John Brackman  
Shirley Blatnik  
Juliet W. Nundie

~~Orville & Cecelia~~  
~~Robert & Kathleen~~  
~~John~~  
W. H. Harmon  
Gordon Bailey  
Walt Helms  
Charlotte Pitt  
Homer Heck  
J. E. Spores  
Wes Long  
Robert K. Howard  
~~John~~  
Lyn Windshush  
George Brainerd  
J. J.

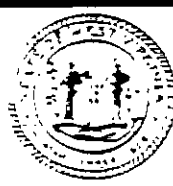


EXHIBIT 4

STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON 25305

June 27, 1990

GASTON CAPERTON  
GOVERNOR

The Honorable Robert Chambers  
Speaker  
West Virginia House of Delegates  
State Capitol, Room 229  
Charleston, West Virginia 25305

Dear Speaker Chambers:

Recently there has been considerable concern voiced about two emergency rules proposed by the Department of Health and Human Resources relating to fees for services. I believe these concerns are legitimate. Consequently, the Department will take the following actions on these proposed fees.

The Department will modify Series 51, Fees for Services. Based upon comments received from legislators and citizens it appears these rules exceeded legislative intent under House Bill 4660 passed last session. The Department will delete all sections related to milk fees and technical services fees and operating permits for water and sewage. Based on the comments received, the Department feels this will eliminate the concerns about this rule. If further problems arise, the Department is prepared to make additional adjustments. Action on the deleted sections will not occur without concurrence of the legislative leadership.

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I trust these actions will adequately address your concerns.

Sincerely,

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Gaston Caperton  
Governor

GC:sh

cc: Taunja Willis Miller



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Building 3, Capitol Complex  
Charleston, WV 25305

Gaston Caperton  
Governor

July 16, 1990

The Honorable Ken Hechler  
Secretary of State  
State Capitol Building  
Charleston, West Virginia 25305

Dear Secretary Hechler:

This letter concerns the Fees for Services rule filed in your Office on an emergency basis on July 12, 1990 by the Division of Health of the Department of Health and Human Resources. The purpose of this letter is to provide the additional information requested by your Office regarding the Department's interactions with members of the Legislature about this rule subsequent to the public hearing held on June 22, 1990.

Since the public hearing, I have personally discussed their objections to the rule as it was proposed for hearing with a number of Senators and Delegates. During the session, I met individually with Senator Craigo, Senator Holliday and Senate President Keith Burdette, but not until after the Senate had decided to write your Office concerning the rule and were actually in the process of signing the letter received by Secretary Hechler. I also spoke again with President Burdette and Delegate Pat Murphy last week.

The criticisms of the rule expressed by legislators to me dealt with the proposed fees relating to: milk laboratory testing, permits and products; and the operation of and technical assistance to water and sewage systems based on volume. These controversial items have been deleted from the emergency rule. It is my understanding, based on the above-reported conversations, that the deletion of these very controversial fees make the rule acceptable. I have attached for your information a letter sent to President Keith Burdette and Speaker Chuck Chambers regarding revisions to this rule.

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1990 JUL 16 PM 1:44  
OFFICE OF THE SECRETARY OF STATE  
FILED

The Honorable Ken Hechler  
July 16, 1990  
Page 2

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It is the Department's belief that the emergency rule filed in your Office not only satisfies legislative concerns, but also omits a number of other controversial proposals. No future actions will be taken by the Department on these controversial issues without legislative review through the routine rule-making process.

I hope that this letter will assist you in deciding to accept the emergency filing. If I can be of further assistance to you, please let me know.

Sincerely,



Raymona A. Kinneberg  
Deputy Secretary

RAK/kpg  
Attachment

cc: Taunja Willis Miller



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Building 3, Capitol Complex  
Charleston, WV 25305

Gaston Caperton  
Governor

July 12, 1990

The Honorable Keith Burdette  
President, West Virginia State Senate  
State Capitol Complex  
Building 1, Room 229  
Charleston, West Virginia 25305

The Honorable Robert "Chuck" Chambers  
Speaker, West Virginia House of Delegates  
State Capitol Complex  
Building 1, Room 234  
Charleston, West Virginia 25305

Re: Board of Health Series 30 Rules and  
Division of Health Series 51 Rules

Dear President Burdette and Speaker Chambers:

As indicated in the Governor's June 27, 1990 letter to you, I have personally reviewed the proposed modification to the existing Series 30 Rules of the Board of Health. In doing so, I also reviewed the comments made regarding the rules. Although several concerns were expressed, the primary concern involved the proposal of a \$5 maximum fee for any food handler. Those concerns centered around cost and administrative requirements for a large pool of employees with a high turnover rate. On the other hand, several local health departments expressed a serious need for the rules to be adopted as soon as possible, because they need the other, increased permit fees to perform some basic services. Consequently, I propose not to sign the rules as submitted but to request the Board of Health to reconsider the rules without the food handler permit fee at a meeting on July 20, 1990. Assuming the revised rules are approved by the Board of Health, we would file them as emergency rules on July 23, 1990. A copy of the rules I propose to submit to the Board of Health is enclosed. One additional change to the rules enclosed may be proposed to the Board of Health by our Office of Environmental Health. The enclosed rules add to the existing Series 30 Rules a permit for modification to individual on-site or innovative or alternative type of sewage facility. Because modification is extremely hard to define and, thus, monitor, the Office may ask the Board to remove the provision from the proposed rules. Please let me know if the revised Series 30 Rules and our proposed actions are acceptable or if you have other suggestions.

Also enclosed is a copy of the Series 51 Rules of the Division of Health, as modified in accordance with the Governor's June 27 letter. The confusion and concern regarding the proposed rule was caused by miscommunications on our

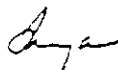
The Honorable Keith Burdette  
The Honorable Robert "Chuck" Chambers  
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Re: Board of Health Series 30 Rules and  
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part. All discussions regarding the Series 51 Rules in which either Raymona Kinneberg or I was involved contemplated only making up the amount by which general revenue funding for the services had been reduced. This, of course, is consistent with the Legislature's understanding. Like several other State programs, however, the Division of Health's water program has recently been criticized by the Environmental Protection Agency. To address EPA's concerns, the Office of Environmental Health within the Division increased the proposed fees. They anticipated using the revenues generated by the fees over and above those needed to replace general revenues to improve the water program. Consequently, it is true that the fees would have resulted in monies in excess of the budget decrease. It is also true, however, that the excess monies would have been spent on water programs and not used for other purposes within the Department. Regardless, we deleted sections related to milk fees, technical services fees and operating permits for water and sewage before filing the Series 51 Rules. Joe Schock, the Director of our Office of Environmental Health, is establishing a work group of persons within and outside the Division to address the need for increased funding in the water program. We will, of course, not make any final decisions without your concurrence.

Again, I apologize for any confusion and concern these two rules caused. I believe we have been able to reach at least temporary solutions satisfactory to most of the parties. In addition, we have focused on those areas needing additional discussion and attention. Please let me know if you have any questions or concerns.

Very truly yours,



Taunja Willis Miller, Secretary  
Department of Health and Human Resources

TWM/jah

Enclosures

cc: The Honorable George Farley  
The Honorable Earl Ray Tomblin  
Tom Heywood  
✓ Raymona Kinneberg  
Joe Schock