

Arch A. Moore, Jr.
Governor



David K. Heydinger, M.D.
Director

State of West Virginia

DEPARTMENT OF HEALTH
CHARLESTON 25305

NOTICE OF AGENCY APPROVAL OF A LEGISLATIVE RULE

AGENCY: Director of Health
NEW RULE: X AMENDMENT TO EXISTING RULE:
RULE TITLE: Hazardous Material Treatment Information Repository, Series 53

This proposed legislative rule constitutes the official rule approved by this agency following public hearing. This proposed rule is being filed with the Secretary of State and the Legislative Rule-Making Review Committee for review.

David K. Heydinger, M.D.
David K. Heydinger, M.D.
Director of Health

FILED
1986 AUG 13 PM 1:16
OFFICE OF THE SECRETARY OF STATE

FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: Hazardous Materials Treatment Information Reporting DEC -4 PM 1:00

Type of Rule: Legislative Interpretive Procedural

Agency Department of Health Address 1800 Washington St., E.,
Charleston, WV 25305

FILED

AUG 13 PM 1:16
 DEPT. OF HEALTH
 SECRETARY OF STATE

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$ 52,250	\$ 288,000	\$ 280,000
Personal Services			25,000	66,000	70,000
Current Expense			18,250	192,000	200,000
Repairs and Alterations					
Equipment			9,000	30,000	10,000
Other					

2. Explanation of above estimates.

Three additional personnel required to collect, collate, record and enter data into computer system.

Funds needed for preparation and printing hazardous materials list and treatment protocols.

Office equipment and computer enhancement needed.

3. Objectives of these rules:

To establish a central repository of information necessary to provide health personnel with current data for treatment and management of persons exposed to hazardous materials.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date 11/27/85

Signature of Agency Head or Authorized Representative

David L. Heydinger, W.D.

DATE: June 30, 1986

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Department of Health

LEGISLATIVE RULE TITLE: Hazardous Material Treatment Information
Repository

1. Authorizing statute(s) citation Chapter 16, Article 3A,
Section 2

2. a. Date filed in State Register with Notice of Hearing:

December 4, 1985

b. What other notice, including advertising, did you give of the hearing?

Copies of the proposed rule and notice of hearing were mailed

to the Energy Department, United Mine Workers of America and the
West Virginia Manufacturers Association.

c. Date of Hearing(s): January 3, 1986

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

f. Name and phone number of agency person to contact for additional information:

Joan Rutledge

Regulatory Services Division

348-3223

FILED

1986 AUG 13 PM 1:16

CLARENCE D. JONES, JR.
SECRETARY OF STATE

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of Hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached

FILED

WEST VIRGINIA BOARD OF HEALTH
RULE ABSTRACT 1985 DEC -4 PM 1:00

TITLE: Hazardous Material Treatment Information Repository
NUMBER: Chapter 16-3A, Series 53, 1986
TYPE: Legislative
AUTHORIZING CODE: Chapter 16, Article 3A, Section 2
RELATED CODE: Chapter 16, Article 3A, Section 1, et seq.
SCOPE: This rule establishes the requirements for assembling and updating a hazardous materials treatment information repository.
APPLICATION: This rule applies to any industry, agency, firm, corporation or individual involved in the use, production, storage or transportation of hazardous materials in this state, any medical group or person, or any academic institution or person.
ABSTRACT: This rule establishes the requirements for assembling and updating a list of hazardous materials in West Virginia, including information on the immediate medical effects of exposure to such materials, the appropriate emergency medical treatment of persons exposed to such materials and the most effective methods of distributing this information to medical emergency personnel.
CONTACT PERSON: Judy Smith, Regulatory Services Division, 348-3223.
RESPONSIBLE DIVISION: Dr. Fred Cooley, Director, Emergency Medical Services, 348-3956

[PROPOSED]

WEST VIRGINIA LEGISLATIVE RULES
DIRECTOR OF HEALTH

Hazardous Material Treatment Information Repository
Chapter 16-3A
Series 53
1986

FILED

1986 AUG 13 PM 1:16

STATE OF WEST VIRGINIA
SECRETARY OF STATE

[PROPOSED]

WEST VIRGINIA LEGISLATIVE RULES
DIRECTOR OF HEALTH

Hazardous Material Treatment Information Repository

Chapter 16-3A
Series 53
1986

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[PROPOSED]

WEST VIRGINIA LEGISLATIVE RULES
DIRECTOR OF HEALTH

FILED

Chapter 16-3A
Series 53
1986

1986 AUG 13 PM 1:10

OFFICE OF THE CLERK
SECRETARY OF STATE

Subject: Hazardous Material Treatment Information Repository

Section 1. General

1.1. Scope - This rule establishes the requirements for assembling and updating a list of hazardous materials in West Virginia including information on the immediate medical effects of exposure to such materials, the appropriate emergency medical treatment of persons exposed to such materials and the most effective methods of distributing this information to medical emergency personnel.

1.2. Authority - This rule is issued under the authority of Chapter 16, Article 3A, Section 2 of the West Virginia Code and is related to Chapter 16, Article 3A, Section 1, et seq.

1.3. Filing Date -

1.4. Effective Date -

Section 2. Application and Enforcement

2.1. Application - This rule shall apply to all manufacturers as defined in Section 3.4 of this rule, any medical group or person, or any academic institution or person.

2.2. Enforcement - The enforcement of this rule is vested with the director of the West Virginia department of health.

Section 3. Definitions

3.1. Hazardous Materials List - The list, as approved by the director, of chemical substances which have been determined to be or are suspected to be hazardous or toxic to human health. This list will be a compilation of

hazardous chemicals from several sources including: (1) the existing list prepared by the commissioner of labor pursuant to Section 18, Article 3, Chapter 21 of the code, (2) any list, publication, regulation, report, guideline or other compilation of the occupational health and safety administration of the United States department of labor, (3) any list, publication, regulation, report, guideline or other compilation of the national institute for occupational safety and health, (4) any list, publication, regulation, report, guideline or other compilation of the national fire protection association, (5) any list, publication, regulation, report, guideline or other compilation of the United States environmental protection agency, (6) the hazardous substances list developed by the department of health pursuant to the Community Right to Know Act Chapter 16, Article 31, Section 4a of the Code, or (7) any other source considered by the director to be reliable. The list may include materials not in routine use in this state.

3.2. Director - The director of the West Virginia department of health or his or her lawful designee.

3.3. Medical and Emergency Personnel - Emergency medical personnel as defined in Chapter 16, Article 4C, Section 3 of the Code of West Virginia, and any physician, osteopathic physician, registered nurse or licensed practical nurse who provides emergency care to patients.

3.4. Manufacturers - Any industry, agency, firm, corporation or individual involved in the industrial or business use, production, storage or transportation of hazardous materials in this state.

Section 4. Program for Assembling and Updating Hazardous Materials List

4.1. Requests for Information from Manufacturers

4.1.1. Upon receipt of a request from the director for information related to the use, storage, production or transportation of materials listed on the hazardous materials list, the manufacturer or his designee, any medical group or person, or any academic institution or person, shall provide information related to the frequency of use, the frequency of exposure or over-exposure of persons to the materials, the known harmful effects of such material and the recommended medical treatment of persons exposed to such materials in such format as required by the director for each material used, produced, transported or stored by the manufacturer, unless good cause be shown to the satisfaction of the director why such request is unreasonable because of the potential breach of a trade secret. The information shall be requested by certified mail and shall be provided to the director within thirty days of the receipt of the request.

4.1.2. In cases where a chemical substance of known hazard is used, manufactured, stored or transported by any manufacturer and not included on the hazardous material list, the manufacturer shall prepare a special reporting form as provided by the director and the director shall, at his or her discretion, add the substance to the hazardous materials list.

4.1.3. Material Safety Data Sheets submitted to the Director from manufacturers in compliance with Chapter 16, Article 31 of the Code of West Virginia, as amended, and rules and regulations promulgated thereto, shall be used to establish baseline data for purposes of these rules and regulations and duplication of data previously submitted by any manufacturer will not be required.

4.2. Updating Hazardous Materials List

4.2.1. The director shall revise the hazardous materials list on an annual

basis to reflect additions or deletions to such list based upon information as provided by manufacturers or other responsible sources.

4.2.2. The director may authorize the use of any reliable source which includes a comprehensive listing of hazardous materials and the emergency medical treatment recommended for exposure to such materials as meeting the intent of this rule in full or in part relating to the distribution of such information to medical or emergency personnel.

Section 5. Program for Distribution of Information to Medical and Emergency Personnel

5.1. The director may authorize the distribution of recognized publications which provide information related to the hazards of materials and the medical treatment of exposed individuals.

5.2. The director may publish and make available handbooks, guidelines or other information materials which include a listing of hazardous materials used, manufactured, stored or transported in West Virginia for the purpose of disseminating such information to emergency and medical personnel.

Section 6. Repository for Information

6.1. The director may utilize the West Virginia poison information center as the central repository for the information and medical care practices necessary for treatment of persons exposed to substances identified in the hazardous materials list.

6.2. The director shall maintain a file of the chemical name of those materials found to be hazardous and produced, stored, used or transported by West Virginia firms, industries or individuals.

Section 7. Penalties - Any person, or corporation, that violates the provisions of this rule shall be subject to a civil penalty of not less than one hundred

dollars nor more than one thousand dollars for each violation. When the director believes that a violation has occurred he may request the attorney general or the prosecuting attorney of the county where the violation occurred to file a civil action for civil penalties, or for injunctive or other relief, or both penalties and injunctive or other relief.

Section 8. Administrative Due Process - Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in Rules of Procedure for Contested Case Hearings and Declaratory Rulings, West Virginia Board of Health Procedural Rules, Chapter 16-1, Series 1, 1983.

Section 9. Severability - The provisions of this rule as declared to be severable. If any provisions of this rule shall be held invalid, the remaining provisions of this rule shall remain in effect.



WEST VIRGINIA

MANUFACTURERS ASSOCIATION

SUITE 414
405 CAPITOL STREET
CHARLESTON, WV 25301
TELEPHONE (304) 342-2123

January 3, 1986

JAN 7 1986
REGULATORY SERVICES
DIVISION

Mr. David K. Heydinger, M.D.
Director of Health
1800 Washington Street, East
Charleston, West Virginia 25305

Attention: Regulatory Services Division

Re: Comments on Proposed Hazardous Material
Treatment Information Repository Regulations

Dear Dr. Heydinger:

On behalf of the Environmental Control Committee of the West Virginia Manufacturers Association, I am pleased to provide the enclosed comments on the proposed regulations relating to the Hazardous Material Treatment Information Repository. We appreciate the opportunity to address these regulations and trust that our comments will be given due consideration.

Very truly yours,

Robert L. Foster, Chairman
Environmental Control Committee
West Virginia Manufacturers
Association

RLF/vlp
Enclosures



**WEST VIRGINIA
MANUFACTURERS ASSOCIATION**

SUITE 414
405 CAPITOL STREET
CHARLESTON, WV 25301
TELEPHONE (304) 342-2123

COMMENTS OF WEST VIRGINIA MANUFACTURERS ASSOCIATION
ON PROPOSED HAZARDOUS MATERIAL TREATMENT
INFORMATION REPOSITORY REGULATIONS

January 3, 1986

In response to the notice of public hearing and comment which was filed with the Secretary of State on December 4, 1985, the West Virginia Manufacturers Association is pleased to provide its comments on the Proposed Hazardous Material Treatment Information Repository Regulations promulgated by the Director of the Department of Health pursuant to West Virginia Code §§16-3A-1 et seq. Because of the potential impact of these regulations on our members, our association has a keen interest in assuring the establishment of a reasonable and responsible set of regulations on this subject.

Our primary concern is that the regulations are overly broad and place unauthorized, unnecessary, and burdensome reporting obligation on businesses and private citizens of this State. Our comments on specific provisions are made by reference to the appropriate section of the regulations.

2.1. Application - This provision uses the terms "any medical group or person" and "any academic institution or person". Neither of these terms is defined in the regulations. Without further definitions, these terms are so vague and ambiguous that they fail to give clear notice to persons who may be covered by them of their responsibilities under the regulations.

3.1. Hazardous Materials List - This list is defined as the list of chemical substances determined by the Director to be "potentially" hazardous to health. It is submitted that this language is objectionable because it distorts the language of the statute. West Virginia Code §16-3A-2(a) provides that the Director is to establish a list of hazardous materials "which have been determined to be or are suspected to be hazardous or toxic to human health." It is submitted that the term "potentially" has been improperly included in the regulations in lieu of the more precise language of the statute. Therefore, we recommend that the first sentence of this section be revised to read as follows:

The list of chemical substances which have been determined to be, or are suspected to be hazardous or toxic to human health.

3.4. Manufacturers - This term is defined as "any industry, agency, firm, corporation or individual involved in the use, production, storage or transportation of hazardous materials in this State." This definition is written so broadly that it is likely to include every homeowner, every shopkeeper, and almost every citizen in the State of West Virginia, in addition to the narrow segment of our society which regularly handles hazardous materials. We are confident that the Legislature did not intend such a broad application of this law. For this reason, we recommend that this section be revised to reflect the definition used under the West Virginia Community Right to Know Act (W. Va. Code §16-31-3(c)) and that the term "manufacturer" be defined as follows:

Manufacturer - Any person engaged in a business in this State having a standard industrial classification, as designated by the Standard Industrial Classification Manual prepared by the Federal Office of Management and Budget, within major group members 20-39, inclusive.

4.1.1. - This provision specifies the information that must be provided upon request of the Director. It includes a number of vague and unnecessary provisions. It requires information to be provided relating to the "frequency of exposure or over-exposure of persons exposed to the materials". It is submitted that any request for these kinds of information would exceed the authority that has been given to the Director of Health under this law. Authority to require this information has already been given the Commissioner of Labor pursuant to West Virginia Code §21-3-18. In addition, it is not necessary for medical personnel to have this kind of information in order to properly treat a case of over-exposure. Furthermore, the lack of a definition for the term "exposure" gives no direction to a manufacturer who would be required to report this information. For example, would walking past a closed barrel with such material in it constitute an incident of "exposure"; or where the material is part of the raw materials used in a production process is "exposure" deemed to be constant, so long as that product is produced? For these reasons we urge that the references to frequency of exposures be deleted from the regulations.

This section also requires manufacturers to report "the known harmful effects of such material and the recommended medical treatment of persons exposed to such materials". We

believe that the law contemplates that where a manufacturer is using a material that has been produced by someone else, it is not required to make an independent investigation of harmful effects or recommended medical treatment, but rather, was entitled to rely upon the information that has been provided to it by the original manufacturer. We believe this point should be made clear in this section of the regulations.

Finally, this provision allows thirty days to provide this information to the Director. We believe this may be an unreasonably short period of time, especially if the information is not immediately available to the manufacturer and the original manufacturer or some other source of information must be consulted. Therefore, this provision should be written to allow some flexibility in these situations.

Therefore, for all these reasons, we recommend that Section 4.1.1. be revised to read as follows:

Upon receipt of a request from the Director for information related to the use, storage, production or transportation of materials listed on the hazardous materials list, the manufacturer or his designee, any medical group or person, or any academic institution or person, shall provide information related to the frequency of use, the known harmful effects of such material and the recommended medical treatment of persons exposed to such materials in such format as required by the Director for each material used, produced, transported or stored by the manufacturer, unless good cause be shown to the satisfaction of the Director why such request is unreasonable because of the potential breach of a trade secret. In providing such information the manufacturer may rely upon the representations of the original manufacturer of the material or some other knowledgeable source. The information shall be requested by certified mail and shall be provided to

the Director within thirty days of receipt of the request unless the manufacturer, for good cause shown, requires additional time to secure the information, in which case such additional time shall be provided.

4.1.2 - This section appears to place an affirmative obligation on manufacturers to report to the Director cases where "a chemical substance of known or suspected hazard is used, manufactured, stored or transported" and the substance has not been included in the hazardous materials list. Our association strenuously objects to this provision. It is our understanding that when the bill which eventually became this law was presented to the Legislature, it was presented under the concept that the Director would prepare a list and that he could request information from manufacturers concerning materials on that list. Section 4.1.2 introduces a new concept that is not contemplated under the statute. Because of the vagueness of the phrase "known or suspected hazard" it will be extremely difficult for any manufacturer to know precisely which substances must be reported under this provision. Because this provision goes beyond the reporting that was contemplated by the Legislature when it passed this law, Section 4.1.2. should be deleted from the regulations.

4.2.2. - This provision allows the Director to use any "recognized publication" as the basis for his listing of hazardous materials. This term is unnecessarily vague. In addition, the list of authorities set out in the statute is sufficiently broad so that the Director should not be encouraged to seek other listings of "hazardous materials." We therefore urge that Section 4.2.2. be deleted.

Proposed Rules
Public Comments Received
Discussion and Response

Title, Type and Number: Hazardous Material Treatment Information Repository, Chapter 16-3A, Series 53, 1986.

Date and Location: January 3, 1986 (1:00 p.m.), Conference Room, P & G Building, 2019 Washington Street, East, Charleston, West Virginia 25311.

Although written comments were required, a public hearing was held on January 3, 1986; however, no one attended. Written comments were submitted by the West Virginia Manufacturers Association and are discussed below. Changes proposed in response to comments received do not alter the intent of the rule; they are either clarifications or minor adjustments to particular standards. The Department does not believe that an additional public comment period is required.

1. Comment: 2.1. This provision uses the terms "any medical group or person" and "any academic institution or person". These terms are vague and fail to give clear notice to persons who may be covered by them of their responsibilities under the regulations.

Response: We believe the intent of the law is clear and have used the same language that appears in West Virginia Code 16-3A-2(e) which specifically includes "any person, any industry or company, any medical group or person, or any academic institution or person." Also, the information is for treatment purposes and, when needed, will be specifically requested by the Director.

Proposed: No change.

2. Comment: 3.1. The Hazardous Materials List is defined as a list of chemical substances determined by the Director to be "potentially" hazardous to health. It was submitted that the term "potentially" has been improperly included in the regulations in lieu of the more precise language of the statute. It was recommended that the first sentence of this section be revised to read as follows:

The list of chemical substances which have been determined to be, or are suspected to be hazardous or toxic to human health.

Response: We agree, the first sentence of §3.1 should be revised.

Proposed: §3.1. The list, as approved by the director, of chemical substances which have been determined by the director to be potentially-hazardous to health to be or are suspected to be hazardous or toxic to human health.

3. Comment: 3.4. The definition of "manufacturers" is written so broadly that it is likely to include every homeowner, every shop keeper, and almost every citizen in the State of West Virginia, in addition to the narrow

segment of our society which regularly handles hazardous materials. It is recommended that this section be revised to reflect the definition used under the West Virginia Community Right to Know Act (West Virginia Code Section 16-31-3(c)) and that the term "manufacturer" be defined as follows:

Any person engaged in a business in this State having a standard industrial classification, as designated by the Standard Industrial Classification Manual prepared by the Federal Office of Management and Budget, within major group members 20-39, inclusive.

Response: The definition of "manufacturers" proposed by the commentor will not meet the intent of Chapter 16, Article 3A, Section 2 of the West Virginia Code because it may exclude those who transport, dispose of or store hazardous materials. We do, however, agree to clarify the definition by specifying that this section applies to industrial and business use.

Proposed: §3.4. Any industry, agency, firm, corporation or individual involved in the industrial or business use, production, storage or transportation of hazardous materials in this state.

4. Comment: 4.1.1. This section requires information to be provided relating to the "frequency of exposure or over-exposure of persons exposed to the materials." The commentor feels that any request for these kinds of information would exceed the authority that has been given to the Director. The lack of a definition for "exposure" gives no direction to a manufacturer required to report this information. It is urged that the reference to frequency of exposure be deleted from the regulations.

This section also requires manufacturers to report "the known harmful effects of such material and the recommended medical treatment of persons exposed to such materials". The commentor believes that where a manufacturer is using a material that has been produced by someone else, it is not required to make an independent investigation of harmful effects or recommended medical treatment, but rather, is entitled to rely upon information as provided by the original manufacturer; this should be made clear in the regulations.

Finally, this section allows thirty days to provide this information to the Director. The commentor feels this may be an unreasonably short period of time.

For all the reasons listed above the commentor suggests Section 4.1.1 be revised as follows:

Upon receipt of a request from the Director for information related to the use, storage, production or transportation of materials listed on the hazardous materials list, the manufacturer or his designee, any medical group or person, or any academic institution or person, shall provide information related to the frequency of use, the known harmful effect of such material and the recommended medical treatment of persons exposed to such materials in such format as required by the Director for each material used, produced, transported or

stored by the manufacturer, unless good cause be shown to the satisfaction of the Director why such request is unreasonable because of the potential breach of a trade secret. In providing such information the manufacturer may rely upon the representations of the original manufacturer of the material or some other knowledgeable source. The information shall be required by certified mail and shall be provided to the Director within thirty days of receipt of the request unless the manufacturer, for good cause shown requires additional time to secure the information, in which case such additional time shall be provided.

Response: The definition proposed by the commentor does not meet the intent of the law regarding the frequency, seriousness and effects of exposure and/or over exposure. Also, the proposed rule does not require that an independent investigation of harmful effects or recommended treatment be made, only that it be reported upon request of the Director. This section is more applicable to medical or academic groups. Finally, the provision of the rule which states that information shall be provided to the Director within thirty days is taken from Chapter 16, Article 3A, Section 2(e) of the West Virginia Code.

Proposed: No change.

5. Comment: §4.1.2. This section appears to obligate manufacturers to report to the Director cases where "a chemical substance of known or suspected hazard is used, manufactured, stored or transported" and the substance has not been included in the hazardous materials list. Because the phrase "known or suspected hazard" is vague it will be difficult for any manufacturer to know precisely which substances must be reported. The commentor stated that this provision goes beyond the reporting that was contemplated by the legislature and should be deleted.

Response: We agree that "suspected hazard" is vague; however, when a chemical substance is or becomes a "known hazard" it is then the responsibility of those covered by this rule to make a report to the Director.

Proposed: §4.1.2. In cases where a chemical substance of known or suspected hazard is used, manufactured, stored or transported by any manufacturer and not included on the hazardous material list, the manufacturer shall prepare a special reporting form as provided by the director and the director shall, at his or her discretion, add the substance to the hazardous materials list.

6. Comment: The Department proposes to add §4.1.3 to clarify that duplication of data previously submitted to the Director by any manufacturer will not be required.

Proposed: §4.1.3. Material Safety Data Sheets submitted to the Director from manufacturers in compliance with Chapter 16, Article 31 of the Code of West Virginia, as amended, and rules and regulations promulgated there to, shall be used to establish baseline data for purposes of these rules and regulations and duplication of data previously submitted by any manufacturer will not be required.

7. Comment: §4.2.2. This provision allows the Director to use any "recognized publication" as the basis for the listing of hazardous materials; this term is vague. Also, the list of authorities set out in the statute is sufficiently broad so that the Director should not be encouraged to seek other listings of "hazardous materials". The commentor proposes §4.2.2 be deleted.

Response: We agree that the term "recognized publication" is vague. However, we do not agree that §4.2.2 be deleted since the purpose of the list is to provide treatment personnel with necessary information. This section will be rewritten to clarify that the list is maintained and updated for treatment purposes rather than for reporting purposes.

Proposed: §4.2.2. The director may authorize the use of any ~~recognized publication~~ reliable source which includes a comprehensive listing of hazardous materials and the emergency medical treatment recommended for exposure to such materials as meeting the intent of this rule in full or in part relating to the distribution of such information to medical or emergency personnel.