

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #7

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Filing Date

FILED

2009 AUG 14 PM 12: 04

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: DHHR - Bureau for Public Health TITLE NUMBER: 64

CITE AUTHORITY: §§16-1-4(k)(2) and 16-2-1.

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 67

TITLE OF RULE BEING AMENDED: DISTRIBUTION OF STATE AID FUNDS TO LOCAL BOARDS OF HEALTH

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

H.B. 3195, passed April 11, 2009, and in effect from passage gives specific authority to the Secretary of DHHR to file this rule as an Emergency rule subject to the prior approval of the Legislative Oversight Commission on Health and Human Resources Accountability, LOCHHRA, prior to filing with the Secretary of State, WV Code, §16-1-4(k)(2). This Emergency rule was presented to and approved by LOCHHRA at their meeting on August 10, 2009.

Use additional sheets if necessary


Authorized Signature

EMERGENCY RULE QUESTIONNAIRE

DATE: August , 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* DHHR- Bureau for Public Health, 350 Capitol Street,
Room 702, Charleston, WV 25301 Ph. (304) 558-2971; Fax (304) 558-1035
~~Agency Contact person: Ann A Spaner, email: ann.a.spaner@wv.gov~~

EMERGENCY RULE TITLE: DISTRIBUTION OF STATE FUNDS FOR SUPPORT OF LOC

1. Date of filing August , 2009

2. Statutory authority for promulgating emergency rule:

WV Code §16-1-4(k)

3. Date of filing of proposed legislative rule: Agency Approved rule filed July 31, 2009

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? The Emergency rule amends an existing legislative rule.

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.

~~The emergency rule establishes a new funding formula for distribution of state funds to support local boards of health. The legislature made a finding that an emergency exists with respect to replacing the old rule and authorizing the filing of this emergency rule, [see WV Code §16-1-4(k)(2)] There is a crisis in funding of public health. This rule begins the effort to ameliorate the problem.~~

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.

N/A

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

~~The need to revise the formula used for distribution of state funds for the support of local health departments has been under consideration for many years. After the CBER Study; People at Risk: The Financial Crisis in West Virginia Public Health, was released in December of 2007 it has been the objective of the Association of Local Health Departments and the WV Bureau for Public Health to write and institute a more fair and equitable method for distribution of the money to support local health departments appropriated each year by the Legislature for this purpose~~

**Department of Health and Human Resources
Bureau for Public Health
Emergency Rule
Title 64, Series 67**

**DISTRIBUTION OF STATE FUNDS FOR SUPPORT
OF LOCAL BOARDS OF HEALTH**

BRIEF SUMMARY

This rule has been the subject of a major study to determine a fair and equitable method for distribution of state aid funds to local boards of health. In 2005, the Center for business and Economic Research at Marshall University (CBER) was contracted to perform an independent analysis of funding and funding distribution for local health departments.

This study identified and documented a financial crisis in West Virginia Public Health. The study found that West Virginia ranks dead last in per capita spending on local health. Among the most important recommendations, the study concluded that significantly more state funding should be appropriated to support state mandated local public health services and a more equitable funding formula should be implemented. The formula recommended by the CBER Report is contained in this proposed rule.

FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY

In the Regular Legislative session of 2009, House Bill 3195 passed on April 11, 2009, and was effective from passage. The bill states explicitly that the Legislature finds that an emergency exists and that the Secretary must file an emergency rule to address the distribution of state funds to support local boards of health through the mechanism of an Emergency Rule filing.

The background which necessitates this emergency filing is as follows.

In 2005, the Center for Business and Economic Research (CBER) at Marshall University was contracted to perform an independent analysis of funding and funding distribution for local health departments. This study identified and documented a financial crisis in West Virginia Public Health and recommended that a more equitable funding formula should be implemented. The CBER study made a recommendation that significant new funds be appropriated for support of public health at the state and local level. The study also recommended a multi-step process for making the distribution of state funds to local health departments more fair and equitable. The CBER Study formula forms the basis for the funding formula established in the Emergency rule.

Once this rule becomes effective, it will be used to make the calculations for funding distributions to local boards of health for the remainder of this fiscal year.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Distribution of State Funds to Local Boards of Health, 64CSR67

Type of Rule: X Legislative Interpretive Procedural

Agency: Health and Human Resources

Address: 1900 Kanawha Blvd. East
Bldg. 3, Room 206
Charleston, WV 25305

Phone Number: (304)-558-2971 Email: Ann.A.Spaner@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what effect this measure will have on costs and revenues of state government.

The purpose of the this rule is to establish a funding mechanism for state aid for local health departments and to establish that no public health department will experience decreases based on the new funding formula for the next three years. The recommended formula is based on prevalence of poverty, health status, population density, interventions/permits and consolidations. The rule allows for a percentage of funds to be withheld and available for emergency funding for local health deparmtnet. The rule allows for a percentage of funds to be available for state support of local health departments.

The amount of state funds available for distribution to local health departments by the formula established is the amount of funds appropriated by the Legislature for this purpose. Approval of this rule will create no additional costs to the state.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

Effect of Proposal	Fiscal Year		
	2009 Increase/Decrease (use "-")	2010 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services			
Current Expenses			
Repairs and Alterations			
Equipment			
Other			
2. Estimated Total Revenues			

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

Memorandum

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues not captured elsewhere on this form.

The West Virginia Public Health Partnership, which is comprised of representatives of both the Bureau for Public Health and local health departments, contracted with the Center for Business and Economics Research at Marshall University (CBER) to perform an independent analysis of service levels, funding and fund distribution. One of the key findings of this study was that adopting a new formula that better represents the needs and fiscal capacities fo the local bodies would better distribute State funding. Full implemetation of this formula would require significantly greater appropriations of state funds for local health departments in the future.

Date

Agency

Authorized Representative

6-26-09

Department of Health and Human Resources

Martha Yeager Walker

Martha Yeager Walker
Secretary

FILED

TITLE 64
EMERGENCY RULE
DIVISION OF HEALTH
BUREAU FOR PUBLIC HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

2009 AUG 14 PM 12: 04

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 67
DISTRIBUTION OF STATE AID FUNDS TO
FOR SUPPORT OF LOCAL BOARDS OF HEALTH

§64-67-1. General.

1.1. Scope. -- This legislative rule establishes a formula for the ~~director of the division of health~~ Commissioner to use in distributing State aid funds to support local boards of health.

1.2. Authority. -- W-Va. Code §§~~16-1-4, 16-2-3 and 16-2A-6~~ 16-2-11.

1.3. Filing Date. -- ~~April 8, 1994~~.

1.4. Effective Date. -- ~~April 8, 1994~~.

§64-67-2. Application and Enforcement.

2.1. Application -- This rule applies to the distribution of State aid funds to support local boards of health by the ~~director of the division of health~~ Commissioner.

2.2. Enforcement -- This rule is enforced by the ~~director of the division of health~~ Commissioner.

§64-67-3. Definitions.

3.1. ~~Director~~ ~~The director of the division of health or his or her designee.~~ Base amount -- The amount of floor funding provided to each county up to the amount required to pay the costs of four full time staff persons, including a nurse, a sanitarian, an administrator and a clerical worker using statewide average salaries for each position plus 30% for benefits and 20% for overhead.

3.2. ~~Division of Health (Division)~~ -- ~~The division of health of the department of health and human resources.~~ Bureau -- The Bureau for Public Health in the Department of Health and Human Resources.

3.3. CBER Funding Study -- The Center for Business and Economic Research (CBER) at Marshall University. CBER performed an in depth study of the status of public health funding in West Virginia titled, People at Risk: The Financial Crisis in West Virginia Public Health, dated December 3, 2007. The study made recommendations for establishing a new funding formula to distribute state funds more fairly and equitably. The CBER study recommendations form the basis for the distribution formula adopted in this rule.

3.4. Commissioner -- The Commissioner of the Bureau for Public Health or her or his designee.

3.5. Consolidation -- A formal combining of two or more local health departments and the combining of their boards of health.

~~3.3-3.6.~~ Fiscal Year -- Twelve (12) month period beginning the first day of July and ending the thirtieth day of June.

3.7. Interventions – The number of interventions per thousand population above the state average in the local health department service area, which may include, but shall not be limited to, total patient encounters, environmental inspections, permits issued and other appropriate quantifiable public health services performed by local health departments.

~~3.4.~~ 3.8. Local Board of Health -- A board of health created under the provisions of W.-Va. Code §§16-2-1 to 16-2-15 16-2-7 or 16-2A-1 to 16-2A-10. A local board of health may be organized to encompass one (single county board of health) or more counties (multi-county board of health).

3.9. Population - The population of a county as determined by the Population Estimates Program of the United States Census Bureau data (www.census.gov).

3.10. Population density – A calculation derived from the population data and the Land Area retrieved from the United States Census Bureau.

3.11. Poverty level – The last full year of data per county as reported in the Small Area Income and Poverty Estimates for West Virginia counties.

~~3.5.~~ 3.12. State Aid Funds for basic public health services – All Funds funds appropriated by the Legislature to provide aid to support local boards of health.

3.13. Years of life lost – The last full year of data as reported by the West Virginia Office of Vital Statistics by county for resident deaths and potential years of life lost before age 75.

§64-67-4. Formula; Allocation of Funds.

4.1. The ~~director~~ Commissioner shall distribute State aid funds for basic public health services funds to local boards of health as directed by the State Legislature, this rule and State law.

4.2. The amount of State aid funds for basic public health services funds available for distribution to local boards of health by the formula established by Section 4.3 of this rule is the amount of funds appropriated by the Legislature for this purpose: Provided, That prior to applying the formula, the ~~director~~ Commissioner may withhold no more than two percent (2%) of the funds, as shown in the appropriate line item in the State budget, for use in emergencies according to the provisions of Section 5 of this rule: and, Provided, further, That prior to applying the formula, the ~~director~~ Commissioner shall subtract and distribute no more than 4.7% of the total funds necessary to implement any special instructions of the Legislature appropriated by the legislature to be retained by the bureau for state support of local boards of health.

4.3. The ~~director~~ Commissioner shall calculate the amount of State aid funds for basic public health services funds to be distributed to each local board of health according to the following formula, based upon the recommendations of the CBER Funding Study:

4.3.1. ~~The director shall first determine a per capita dollar figure by dividing the amount of State funds available for distribution by the total State population;~~ Step 1 Poverty: The “need factor” is the percentage of individuals in the county living below the level of income established by the federal government as being in poverty. Poverty shall be assigned a weight of forty percent.

4.3.1.a. Coefficients are percent living below the poverty line:

4.3.1.a.1. Less than 110% = 0.00;

4.3.1.a.2. 111 – 120% = 0.05;

4.3.1.a.3. 121 – 130% = 0.10;

4.3.1.a.4. Above 130% = 0.15.

4.3.2. The director shall multiply the population of each county by the per capita dollar figure to determine each county's share of the funds; and Step 2 Health Status: The "need factor" is years of potential life lost in the county. Health status is assigned a weight of 20 percent.

4.3.2.a. Coefficients are the percent above the state average:

4.3.2.a.1. Less than 110% = 0.00;

4.3.2.a.2. 111-120% = 0.05;

4.3.2.a.3. 121- 130% = 0.10;

4.3.2.a.4. Above 130% = 0.15.

4.3.3. In the instance of a single county local board of health, the director shall distribute to the board the county's share of funds as calculated according to Section 4.3.2 of this rule; in the instance of a multi-county board of health, the director shall distribute to the board the sum of the funds calculated for the individual counties under the jurisdiction of the board. Step 3 Population Density: The "need factor" is density of individuals living in the county less than the state average. Population density is assigned a weight of 15 percent.

4.3.3.a. Coefficients are the percent below the state average:

4.3.3.a.1. Less than 77.0% = 0.15;

4.3.3.a.2. 77.1 – 82.4% = 0.10;

4.3.3.a.3. 82.5 – 90.0% = 0.05;

4.3.3.a.4. Above 90.0% = 0.00.

4.3.4. Step 4 Interventions: The "need factor" is the number of interventions per thousand population above the state average in the county total. Interventions are assigned a weight of 10 percent.

4.3.4.a. Coefficients are the percent above the state average:

4.3.4.a.1. Less than 110% = 0.00;

4.3.4.a.2. 111- 120% = 0.05;

4.3.4.a.3. 121 – 130% = 0.10;

4.3.4.a.4. Above 130% = 0.15.

4.3.5. Step 5 Consolidation: While not a “need factor” this coefficient is included to encourage counties to merge in the provision of local public health services. The indicator is the number of counties served by the local board of health. Consolidation is assigned a weight of 15 percent;

4.3.5.a. Coefficient is the number of counties in the district served by the local board of health:

4.3.5.a.1. One County = 0.00;

4.3.5.a.2. Two to four counties = 0.10;

4.3.5.a.3. Five or more counties = 0.15.

4.3.6. Step 6: Determine the weighted population for each local board of health by:

4.3.6.a. Multiplying each coefficient from steps 1 through 5 by the factor weight for that coefficient,

4.3.6.b. Adding the results for each calculation in subdivision 4.3.6.a. to the number one;

4.3.6.c. Multiply the number of people in the county by the result of subdivision 4.3.6.b. to obtain the weighted population of the county.

4.3.7. Step 7: Base Amount: The determination of the base amount of funds per county shall be calculated as follows:

4.3.7.a. Twenty-two percent (22%) of the amount of state aid funds for local and basic public health services available for distribution to local boards of health as appropriated by the Legislature;

4.3.7.b. Divide the base amount calculation by fifty-five counties to determine the base amount for each county.

4.3.7.c. The base amount shall not exceed the amount needed to pay for four full time staff; a nurse, a sanitarian, an administrator and a clerical worker, using statewide average salaries for each position, plus 30% for benefits and 20% for overhead.

4.3.8 Step 8: Per Capita Distribution: Determine the per capita distribution by;

4.3.8.a. Subtracting the total base amount allocation from the funds available for distribution;

4.3.8.b. Then divide the weighted population of each county into the amount remaining to determine the per capita distribution for each local board of health.

4.3.9. Step 9: Hold Harmless: This step is included to provide that each local board of health receives no less in state funds than they received in the 2009 budget year for a minimum of three years from the effective date of this rule. To implement the hold harmless provision, make the following calculations:

4.3.9.a. Determine the sum of all amounts lost;

4.3.9.b. Determine the sum of all amounts gained;

4.3.9.c. Divide the sum of the amounts lost by the sum of the amounts gained to find the percent to be subtracted from local boards of health with gains to fund those with a loss to achieve the hold harmless funding level;

4.3.9.d. Redistribute the amounts determined by subdivision 4.3.9.c of this subsection to bring each local board of health back to at least its 2009 funding level;

4.4. In performing the calculations described in Section 4.3 of this rule, the ~~director~~ Commissioner shall use the most recent ~~United States Bureau of the Census~~ federal, state and county population figures available.

4.5. The ~~director~~ Commissioner shall complete the calculations as soon as possible, but not more than two (2) weeks after the budget is passed and the legislative budget instructions, ~~commonly referred to as the budget digest,~~ are approved.

4.6. After completing the calculations described in Section 4.3 of this rule, the ~~director~~ Commissioner shall inform local boards of health in writing of their allocation as quickly as possible, but in any case not more than four (4) weeks after the Legislature has passed the budget and approved the legislative budget instructions.

4.7. The ~~director~~ Commissioner shall cause State aid funds for basic public health services funds to be distributed to eligible local boards of health according to standard State procedures beginning the first day of July of the fiscal year for which the funds have been appropriated or as soon as possible after the Legislature has passed the budget and approved the legislative budget instructions.

~~4.8. To minimize the impact of potential losses for some counties, the director shall phase in the use of the per capita formula.~~

~~4.9. Beginning with fiscal year 1997, the director shall distribute State aid funds to local boards of health on a per capita basis as provided by this rule and as otherwise required by State law.~~

§64-67-5. Emergency Fund; Establishment; Administration.

5.1. The ~~director~~ Commissioner shall use the emergency fund established under the provisions of Section 4.2 of this rule to assist local boards of health in need of funds to meet unanticipated financial emergencies. The Commissioner or his or her designee may develop an application form for one or more local boards of health to use to apply for emergency funds.

5.2. Funds not obligated for emergency use by the fifteenth day of May shall be distributed by the ~~director~~ Commissioner to local boards of health according to the provisions of Section 4.3. of this rule.

§64-67-6. Administrative Due Process.

~~Those persons~~ Any person 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 the Bureau for Public Health rule, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64CSR1.

§64-67-7. Severability.

~~The provisions of this rule are severable. If any provision of this rule is invalid, the remaining provisions remain in effect.~~



WEST VIRGINIA LEGISLATURE
STATE CAPITOL
CHARLESTON, WEST VIRGINIA 25305

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

August 12, 2009

Martha Yeager Walker, Secretary
State Department of Health & Human Resources
State Capitol Complex
Building 3, Room 206
Charleston, West Virginia 25305

Dear Secretary Walker:

This letter is to verify that the Legislative Oversight Commission on Health and Human Resource Accountability by a vote taken at their meeting on August 10, 2009 officially approved the emergency rule prepared by the Bureau of Public Health entitled "Distribution of State Funds for Support of Local Boards of Health" as required by HB3195 passed in the 2009 legislative session.

Please call if you have any questions or concerns.

Sincerely,

Senator Roman Prezioso
LOCHHRA Co-Chair

Delegate Don Perdue
LOCHHRA Co-Chair

RP/DP:mmw

cc: Judy Cooper, Secretary of State Administrative Law Division ✓
John Law, DHHR

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