

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

Form #3

Do Not Mark In This Box

FILED

2009 JUL 31 PM 1:54

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

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

CITE AUTHORITY: WV Code §§16-1-4(k)(2) AND 16-2-1

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 67

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Martha Yenger Walker  
Authorized Signature

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

**DISTRIBUTION OF STATE AID FUNDS TO 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.

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

**DISTRIBUTION OF STATE AID FUNDS TO LOCAL BOARDS OF HEALTH**

**STATEMENT OF CIRCUMSTANCES**

In the Regular Legislative session of 2009, House Bill 3195 passed on April 11, 2009, and was effective from passage. The change made by that bill to the state public health rulemaking statute 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 aid funds to local boards of health, in WV Code §16-1-4(k)(2). At the same time that the Bureau for Public Health is filing this rule as an Emergency Rule, it is also being filed as a Legislative rule so that it may remain in effect once the Emergency rule expires.

The background which necessitates this filing is as follows.

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 and recommended that a more equitable funding formula should be implemented.

The 2009 Legislative session passed HB 3195 on April 11, 2009 which allows for the Secretary of DHHR to propose a rule for legislative approval for the distribution of state funds to local health departments. It also recommends components for a more equitable distribution formula. These components are included in the legislative rule that is submitted hereunder. This rule will be filed for public comments and undergo any necessary revisions and refinements between now and the 2010 Legislative session to improve the rule to comply with the legislative intent and to implement the recommendation of the CBER Funding Study Report.

## 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 departmnet. 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)
<b>1. Estimated Total Cost</b>	0	0	0
Personal Services			
Current Expenses			
Repairs and Alterations			
Equipment			
Other			
<b>2. Estimated Total Revenues</b>			

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

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

[Empty box for explanation of above estimates]

**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 for the local bodies would better distribute State funding. Full implementation 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

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: July 31, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Ann Spaner, Director  
Public Health Regulations  
Bureau for Public Health  
350 Capitol Street, Room 702  
Charleston, WV 25301  
(304) 558- 2971

LEGISLATIVE RULE TITLE: DISTRIBUTION OF STATE FUNDS  
TO LOCAL BOARDS OF HEALTH

1. Authorizing statute(s) citation WV Code §§16-1-4 and 16-2-11

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
\_\_\_\_\_

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

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
\_\_\_\_\_

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

Attached X No comments received \_\_\_\_\_

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

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- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Kay Shamblin, Director  
Division of Local Health  
Bureau for Public Health  
350 Capitol Street, Room 515  
Charleston, WV 25301  
Kay.C.Shamblin@wv.gov

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- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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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.

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b. Date of hearing or comment period:

June 29, to July 30, 2009

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 N/A

**Department of Health and Human Resources  
Bureau for Public Health  
Legislative Rule  
Distribution of State Funds  
for Support of Local Health  
64CSR67**

**COMMENTS and RESPONSES**

Comment # 1:

July 23, 2009

Kay Shamblin, Director  
Division of Local Health  
Bureau for Public Health  
350 Capitol Street, Room 515  
Charleston, WV 25301

**RE: Comment on Proposed Rule Title 64 Series 67 – Distribution of State Funds to Local Boards of Health**

Dear Ms. Shamblin:

Please accept this letter as the formal comment by the Association of Local Health Departments on the proposed rule change to Title 64 Series 67 – Distribution of State Funds to Local Boards of Health as filed with the Secretary of State on June 29, 2009.

The Association of Local Health Departments, during its meeting on June 16, 2009, reviewed the proposed rule and fully discussed its impact on local health departments. Prior to this meeting the funding study committee, which is made up of representatives from the ALHD and representatives of your office, had met and examined a number of funding formula scenarios based on the allocation made by the legislature for FY 2010 and made a recommendation to the full membership of ALHD. By action of the ALHD membership this recommendation was accepted.

Specifically, the ALHD supports changing the proposed rule as follows:

**§64-67-3. Definitions.**

3.1. Base amount - the amount of floor funding provided to each county covered by a local health department 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 for each local health department.

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

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

4.3.7.a. Twenty-two percent (22%) of the amount of State aid 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 of money 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:

The ALHD believes these changes to the proposed rule are fair, equitable and embody the basic concepts contained in the independent analysis of funding distribution to local health departments by the Center for Business and Economic Research at Marshall University (CBER) in 2005. While the total allocation provided by the legislature remains well below the amount needed to fully implement the funding distribution as envisioned in the CBER report for FY 2010, especially as it pertains to base funding, the ALHD believes the distribution of funds using this new rule with the changes outlined above will provide the stability necessary to provide essential services.

It is important to point out that the three fiscal year “hold harmless” provision contained in the proposed rule will be required for at least 10 local health departments at the current level of funding allocation by the legislature. In examining the various funding scenarios utilizing a wide range of base funding amounts the changes suggested here to the proposed rule impact the fewest number of counties and citizens as well as the require the lowest amount of funds to hold all local health departments at FY 2009 funding levels while implementing a stable funding formula. Therefore, additional funding allocations to support this formula prior to the expiration of the “hold harmless” provision will be needed to prevent cuts in funding to some local health departments at that time.

The ALHD strongly supports the approval of this proposed rule, with the changes shown above, and looks forward to working with your office to continue to provide the vital public health services needed by the citizens of West Virginia. If you have any questions or if the members of the ALHD can be of any assistance please contact me.

Sincerely,

Julie Miller  
President  
Association of Local Health Departments

(Original signed and sent by mail; and also sent electronically)

Response to Comment #1:

The comments submitted by the West Virginia Association of Local Health Departments (WVALHD) were reviewed. The Bureau for Public Health (BPH) agrees with the submitted changes and has incorporated them into the Rule.

Furthermore, the BPH agrees in principle with all the comments contained in the correspondence and notes that these points of view were part of our consideration as we studied the independent analysis and drafted the Rule for more equitable and fair distribution of state funds for local health.

Agency Approved Changes

1. The title was changed from *Distribution of State Aid Funds to Local Boards of Health* to *Distribution of State Funds to Support Local Boards of Health*.

The previous title referred to a specific funding line in the state budget, “State Aid to Local Health Departments” with funds intended only for distribution to local health departments on a per capita basis. In the past, the State Budget also contained an additional budget line, “Basic Public Health Services Support” (BPHS) that included funds for BPH to provide state support for local health departments as well as funds for distribution to them. The distribution of the BPHS funds was not addressed in the previous version of this rule.

The amended Rule applies to a consolidated budget line, “State Aid for Local and Basic Public Health Services”, which is a combination of the two previously separated budget lines. It includes funds for direct distribution to local boards of health as well as for BPH support for local health departments. The BPHS budget line was eliminated. For the purpose of this Agency Approved rule, the title was changed to more accurately reflect what the Rule does. It gives the BPH clear guidance on how to distribute funds for state support of local health departments, as well as how to distribute directly to local boards of health all of the funds allocated to them by the Legislature.

2. The definition of Base Funding was revised.

When applying actual funding amounts to the formula, it was recommended and approved by BPH, WVALHD and WVPH that the Base amount be calculated as 22% of the total funding allocation. This percentage gives the greatest advantage with the least amount of harm to the counties during this period when adequate funds are not available to support full implementation of the Base Amount suggested in the CBER study. This change was recommended by the WV ALHD in their comment letter.

3. A definition of CBER Funding Study was added. This term is used in the body of the Rule and, thus, requires definition. It also satisfied the intent to acknowledge the contribution made by CBER to this effort.
4. There were minor “clean up” revisions to the Rule as it was filed for public comment. For example: The word, “aid” was replaced with “support” throughout the rule, where appropriate, and in section 4.5. the reference to the budget digest was deleted. Also, in section 5.1. the word order was changed to improve clarity. We have deleted the section on Severability in light of WV Code §29A-3-18.
5. Revisions to section 4.3.9.

When applying actual numbers for calculation of the “hold harmless” provision in the rule, as it was filed for public comment, an error was discovered in section 4.3.9. This error was corrected by a more accurate description of the mathematical operations to derive the proper sums to arrive at the correct percentage of gain for use in hold harmless calculations.

FILED

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

2009 JUL 31 PM 1:54

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.~~