

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

Form #4

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WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

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

CITE AUTHORITY: §§16-1-4 and 16-2-11.

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
FOR SUPPORT OF LOCAL BOARDS OF HEALTH

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

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

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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, ~~by the Commissioner, of State aid funds to support~~ local boards of health by the director of the division of health.
- 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, et seq. 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. Need factor – The relative importance expressed as a mathematical value for each of five health measurement factors described in subsection 4.3. of this rule used to allocate state funds in a fair and equitable manner among local health departments.

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

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

3.12. 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.~~ 3.13. State Aid Funds for basic public health services – All Funds funds appropriated by the Legislature to provide aid to support local boards of health.

3.14. 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 subsection 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~~ retain no more than 4.7% of the total funds necessary to implement any special instructions of the Legislature appropriated by the legislature 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.a. ~~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 is assigned a weight of forty percent.

4.3.a.1. Coefficients are percent living below the poverty line:

4.3.a.1.A. Less than 110% = 0.00;

4.3.a.1.B. 111 – 120% = 0.05;

4.3.a.1.C. 121 – 130% = 0.10;

4.3.a.1.D. Above 130% = 0.15.

4.3.b. 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.b.1. Coefficients are the percent above the state average:

4.3.b.1.A. Less than 110% = 0.00;

4.3.b.1.B. 111-120% = 0.05;

4.3.b.1.C. 121- 130% = 0.10;

4.3.b.1.D. Above 130% = 0.15.

4.3.c. 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.c.1. Coefficients are the percent below the state average:

4.3.c.1.A. Less than 77.0% = 0.15;

4.3.c.1.B. 77.1 – 82.4% = 0.10;

4.3.c.1.C. 82.5 – 90.0% = 0.05;

4.3.c.1.D. Above 90.0% = 0.00.

4.3.d. 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.d.1 Coefficients are the percent above the state average:

4.3.d.1.A. Less than 110% = 0.00;

4.3.d.1.B. 111- 120% = 0.05;

4.3.d.1.C. 121 – 130% = 0.10;

4.3.d.1.D. Above 130% = 0.15.

4.3.e. 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.e.1. Coefficient is the number of counties in the district served by the local board of health:

4.3.e.1.A. One County = 0.00;

4.3.e.1.B. Two to four counties = 0.10;

4.3.e.1.C. Five or more counties = 0.15.

4.3.f. Step 6: Weighted population calculation: The weighted population for each local board of health is determined by:

4.3.f.1. Multiplying each coefficient from steps 1 through 5 by the factor weight for that coefficient;

4.3.f.2. Adding the results for each calculation in paragraph 4.3.f.1. of this subdivision to the number one;

4.3.f.3. Multiply the number of people in the county by the result of paragraph 4.3.f.2. of this subdivision to obtain the weighted population of the county.

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

4.3.g.1. Twenty-two percent (22%) of the amount of state funds for local and basic public health services available for distribution to local boards of health;

4.3.g.2. Divide the base amount calculation by fifty-five counties to determine the base amount for each county; and

4.3.g.3. 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.h. Step 8: Per Capita Distribution: Per capita distribution is determined by;

4.3.h.1. Subtracting the total base amount allocation from the funds available for distribution;

4.3.h.2. Then dividing the weighted population of each county into the amount remaining to determine the per capita distribution for each local board of health.

4.3.i. Step 9: Hold Harmless: This step is included to provide that each local board of health receives no less in state funds than it 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, the Commissioner shall make the following calculations:

4.3.i.1. Determine the sum of all amounts lost;

4.3.i.2. Determine the sum of all amounts gained;

4.3.i.4. 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.i.5. Redistribute the amounts determined by paragraph 4.3.i.4. of this subdivision to bring each local board of health back to at least its 2009 funding level;

4.4. In performing the calculations described in subsection 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 subsection 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 subsection 4.2 of this rule to assist local boards of health in need of funds to meet unanticipated financial emergencies. The Commissioner 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 subsection 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.~~