

**WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION**

Form #2

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

Division of Health

AGENCY: Department of Health & Human Resources TITLE NUMBER: 64

RULE TYPE: Interpretive; CITE AUTHORITY W. Va. Code §16-1-7

AMENDMENT TO AN EXISTING RULE: YES  NO

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

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 79

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

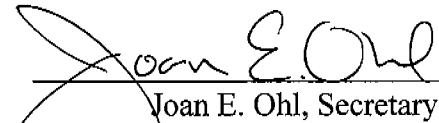
Primary Care Center Information Releases By the Division of Health

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON November 6, 1998 AT 4:30 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

L. Arnold, Office of General Counsel  
Department of Health & Human Resources  
Capitol Complex - Building 3, Room 265  
Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Joan E. Ohl, Secretary

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

\$4.20

**PRIMARY CARE CENTER INFORMATION RELEASES  
BY THE DIVISION OF HEALTH, 64CSR79**

**BRIEF SUMMARY OF THE RULE**

This interpretive rule describes the types of primary care center information that is subject to release by the Division of Health. The West Virginia Freedom of Information Act generally provides for the release of information upon request, and this rule describes the types of primary care center information considered by the Division of Health to be exempt from disclosure under that Act as trade secrets or information of a personal nature. A primary care center's information may be disclosed if the information is aggregated with other centers' information so as not to reveal: a trade secret of the primary care center; the identification of a person with their information of a personal nature; or information that could reasonably lead to such secret or identification.

**PRIMARY CARE CENTER INFORMATION RELEASES  
BY THE DIVISION OF HEALTH, 64CSR79**

**STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE PROPOSED  
RULE**

Primary care centers applying for grant funding from the Division of Health expressed concern that some of the data supplied on the grant application should remain confidential. Release of certain financial and programmatic data considered a trade secret might jeopardize a center's ability to remain a viable entity.

The proposed rule addresses this concern by delineating what information is considered subject to disclosure or exempt from disclosure under the West Virginia Freedom of Information Act. The proposed rule provides the following procedure for the release of information:

The Division of Health shall notify a primary care center in writing when a Freedom of Information Act request is received for a primary care center's audit or application information. The written notification shall identify the requester and the date of the request and shall request written instructions from the primary care center as to the release of any information in the application that is a trade secret. If the Division of Health denies a Freedom of Information Act request for a primary care center's trade secret information and the center then grants written permission to release that information, the Division may then comply with the request. If a primary care center grants written permission to release requested trade secret information, the Division of Health shall, if requested by the center, provide the center with written notification that includes a copy of the released information and the date of release.

**FISCAL NOTE FOR PROPOSED RULES**

**Rule Title:** PRIMARY CARE CENTER INFORMATION RELEASES  
BY THE DIVISION OF HEALTH, 64CSR79

**Type of Rule:**  Legislative  Interpretive  Procedural

**Agency:** Division of Health  
Department of Health and Human Resources

**Address:** Building 3, Capitol Complex  
Charleston, W. Va. 25305

1. Effect of the Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
<b>Estimated Total Cost</b>	\$	\$	\$0	\$0	\$0
<b>Personal Services</b>					
<b>Current Expense</b>					
<b>Repairs &amp; Alterations</b>					
<b>Equipment</b>					
<b>Other</b>					
<b>Revenue</b>					

**2. Explanation of above estimates.**

Minimal costs of less than \$100 are associated with this rule. As shown below these costs would be offset by copying fees charged.

Based on prior requests, it is expected that there will be approximately 5 requests for copies of audit data and 5 requests for application information from persons doing research. These requests will require approximately 5 hours @ \$6.25 of clerical time (for copying) costing \$31.25 per year.

Revenues generated will be \$60: based on charging for 24 pages copied @ .25/pg for ten requests.

**3. Objectives of this rule:**

This interpretive rule describes the types of primary care center information that is subject to release by the Division of Health. The West Virginia Freedom of Information Act generally provides for the release of information upon request, and this rule describes the types of primary care center information considered by the Division of Health to be exempt from disclosure under that Act as trade secrets or information of a personal nature. A primary care center's information may be disclosed if the information is aggregated with other centers' information so as not to reveal: a trade secret of the primary care center; the identification of a person with their information of a personal nature; or information that could reasonably lead to such secret or identification.

**4. Explanation of Overall Economic Impact of Proposed Rule.**

**A. Economic Impact on State Government.**

There is no expected economic impact on state government other than the very minimal dollars identified in item 1 above.

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


There is no expected impact on any political subdivisions or groups of citizens.

**C. Economic Impact on Citizens/Public at Large.**

There will be no economic impact on the citizens/public at large.

**Date:**

**Signature of Agency Head or Authorized Representative**

  
\_\_\_\_\_  
Joan E. Ohl, Secretary  
Department of Health and Human Resources

**TITLE 64  
INTERPRETIVE RULES  
DIVISION OF HEALTH  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 79  
PRIMARY CARE CENTER INFORMATION RELEASES  
BY THE DIVISION OF HEALTH**

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**FILED WITH THE SECRETARY OF STATE FOR PUBLIC COMMENT**

**64CSR79**  
**TITLE 64**  
**INTERPRETIVE RULES**  
**DIVISION OF HEALTH**  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
**SERIES 79**  
**PRIMARY CARE CENTER INFORMATION RELEASES**  
**BY THE DIVISION OF HEALTH**

**FILED**

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OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

**§64-79-1. General.**

1.1. Scope. -- This interpretive rule describes the types of primary care center information that is subject to release by the Division of Health. The West Virginia Freedom of Information Act generally provides for the release of information upon request, and this rule describes the types of primary care center information considered by the Division of Health to be exempt from disclosure under that Act as trade secrets or information of a personal nature.

1.2. Authority. — W. Va. Code §16-1-7.

1.3. Filing Date. --

1.4. Effective Date. --

**§64-79-2. Definitions.**

2.1. Application. — A submission to the Division of Health by a primary care center requesting funding for one or more of the following: primary care support program uncompensated care; equipment and capital costs; school-based health center; and black lung clinics program.

2.2. Primary Care Center. — A nonprofit entity that: is recognized by the Division of Health under the Division's legislative rule Primary Care Center Uncompensated Care Grants, 64CSR70; is not subject to the legal constraints of another individual, organization or facility; and follows the will and direction of its independent board of directors.

**§64-79-3. West Virginia Freedom of Information Act.**

3.1 The Freedom of Information Act, West Virginia Code Chapter 29B, grants a right to inspect or copy any public record of a public body, except as expressly exempted.

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3.2. The Freedom of Information Act expressly exempts from disclosure, among other matters:

3.2.a. Trade secrets which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors; and

3.2.b. Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance.

### **§64-79-4. Audits.**

A primary care center's audit is not considered by the Division of Health to be a trade secret and will be released upon a Freedom of Information Act request.

### **§64-79-5. Applications.**

5.1. All information within an application is subject to disclosure and will be released upon a Freedom of Information Act request unless the information is identified in this rule or in Code as exempt from disclosure.

5.2. Information identified in this subsection as exempt from disclosure is considered by the Division of Health to be a trade secret not subject to disclosure under the Freedom of Information Act.

5.2.a. Expenditure information (summary and line items).

5.2.a.1. Personnel information -- Salaries are exempt from disclosure.

5.2.a.2. Fringe benefits information is subject to disclosure.

5.2.a.3. Current expense information -- Specific line item information is exempt from disclosure.

5.2.b. Revenues.

5.2.b.1. Collection information -- Fee for service information, specific

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payor services of users, encounters, charges, collection rate, collections, uncompensated care and cash basis collections are exempt from disclosure.

5.2.b.2. Managed care health maintenance organization information -- Information regarding specific plans of enrollees, users, average rates, revenues and encounters is exempt from disclosure.

5.2.b.3. Case management plans -- Information regarding specific plans of enrollees, users, average rates, revenues and encounters is exempt from disclosure.

5.2.b.4. Contributions -- Information regarding in-kind and monetary contributions is exempt from disclosure.

5.2.b.5. Federal grant award information is subject to disclosure.

5.2.b.6. State grant award information is subject to disclosure.

5.2.c. Equipment information is subject to disclosure.

5.2.d. Repairs and alterations information is subject to disclosure.

5.2.e. Notes payable information is exempt from disclosure.

5.2.f. Mortgage information is exempt from disclosure.

5.2.g. Ancillary/categorical program information is subject to disclosure.

5.2.h. Budget justification information is exempt from disclosure.

5.2.i. Farmers Home Administration information is subject to disclosure.

5.3. Information of a personal nature is exempt from disclosure as described in section 3 of this rule.

### **§64-79-6. Procedures.**

6.1. The Division of Health shall notify a primary care center in writing when a Freedom of Information Act request is received for a primary care center's audit or application information.

6.1.a. The written notification shall identify the requester and the date of the request and shall request written instructions from the primary care center as to the release of any information in the application that is a trade secret.

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6.2. If the Division of Health denies a Freedom of Information Act request for a primary care center's trade secret information and the center then grants written permission to release that information, the Division may then comply with the request.

6.3. If a primary care center grants written permission to release requested trade secret information, the Division of Health shall, if requested by the center, provide the center with written notification that includes a copy of the released information and the date of release.

### **§64-79-7. Fees.**

7.1. West Virginia Code §16-1-21 allows for reasonable fees for services provided by the Division of Health and local boards of health, and the Division of Health's Fees for Services Rule, 64CSR51, contains the fees applicable to services provided under this rule. Subsections 4.3 and 4.4 of the Fees for Services Rule currently provide as follows:

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

Fee for Record Searches and Compilation of Information - Requests for information estimated to require more than ten (10) minutes to search records or to compile may be charged at the rate of twenty-five dollars (\$25) per hour, and payment may be required before issuance of the information.

7.2. If information is requested by an individual or entity that is in a contractor or subcontractor relationship with the Division of Health, or that has a grant, memorandum of understanding or cooperative agreement with the Division, or that is providing to the Division a product derived from information released by the Division, the Division may provide the requested information free of charge.

### **§64-79-8. Other Releases of Information.**

8.1. The Division of Health may by contract release primary care center information to contractors with the Division for the purpose of assisting the Division in carrying out its functions: Provided, That the contractors shall be prohibited from the release or other use of information that is exempt from disclosure under the Freedom of Information Act.

8.2. The Division of Health may on its own initiative release to the public primary care center information that is neither a trade secret nor information of a personal nature.

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8.3. Notwithstanding other provisions of this rule, a primary care center's information may be disclosed if the information is aggregated with other centers' information so as not to reveal: a trade secret of the primary care center; the identification of a person with their information of a personal nature; or information that could reasonably lead to such secret or identification.

8.4. Primary care center information exempt from disclosure under the Freedom of Information Act may be subject to disclosure under other Code provisions, such as by the West Virginia Health Care Authority.

### **§64-79-9. Severability.**

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