

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

Division of Health

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

CITE AUTHORITY: W. Va. Code § 16-1-7

RULE TYPE: PROCEDURAL _____ INTERPRETIVE X

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

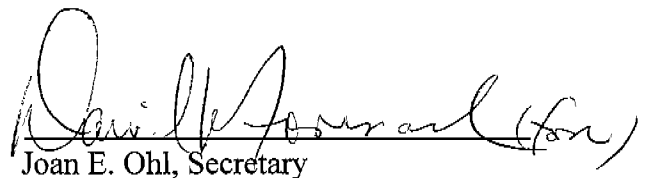
IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 79

TITLE OF RULE BEING ADOPTED: _____

Primary Care Center Information Releases by the Division of Health

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF

STATE. THE EFFECTIVE DATE OF THIS RULE IS January 1, 1999


Joan E. Ohi, Secretary

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**DEPARTMENT OF HEALTH AND HUMAN RESOURCES
RULE PROMULGATION HISTORY ABSTRACT**

Rule Title: Primary Care Center Information Releases by the Division of Health

Series Number: 79

Amendment of Existing Rule: **New Rule:**

Responsible Agency: Division of Health, Department of Health and Human Resources

Date Filed for Public Hearing or Comment Period: September 30, 1998

Date of Public Hearing (if any):

Date Public Comment Period Ended: November 6, 1998

**Date Agency-Approved Rule Filed with the
Legislative Rule-Making Review Committee:** N/A

**Date of Filing of Modified Rule as Approved by
the Legislative Rule-Making Review Committee:** N/A

Date of Final Filing: December 1, 1998

Effective Date: January 1, 1999

Authorized by: W. Va. Code § 16-1-7
Passed: 1992

Dates Emergency Rule in Effect (if any): N/A

**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**

ADOPTION AND FILING WITH THE SECRETARY OF STATE

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

DEC 1 9 21 AM '98

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

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

§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. – December 1, 1998.

1.4. Effective Date. – January 1, 1999.

§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.