

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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FILED

1991 JUN 17 PM 4:04

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #7

Effective Date

July 1, 1991

NOTICE OF AN EMERGENCY RULE

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 65

CITE AUTHORITY: W.Va. Code §16-5F-3, §§16-29B-8(a), 17, 18 and 23

EMERGENCY 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 FILED AS AN EMERGENCY: 13

TITLE OF RULE BEING FILED AS AN EMERGENCY: Financial Disclosure
Rule

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

H.B. 2194, effective March 20, 1991, mandates the Health Care Cost Review Authority to implement rules to require financial disclosure from ambulatory health and surgical facilities, rehabilitation facilities, home health agencies, etc. as well as hospitals and nursing homes. In addition the law requires all organizations related to these entities to file financial information. This information is necessary to assist the agency in containing health care costs in the state. Furthermore, W.Va. Code §16-29B-8(a)(1) grants the agency authority to file emergency rules.

Use Additional Sheets If Necessary.


Signature
Larry C. Fizer, Chairman

4/20

APPENDIX B

FILED

FISCAL NOTE FOR PROPOSED RULES

1991 JUN 17 PM 4: 04

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Rule Title: Financial Disclosure Rule

Type of Rule: Legislative Interpretive Procedural

Agency Health Care Cost Review Authority Address 100 Dee Drive, Suite 201
Charleston, West Virginia 25311

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 19,400.	\$	\$	\$ 19,400	\$ 14,400
Personal Services	11,520			11,520	11,520
Current Expense	2,880			2,880	2,880
Repairs and Alterations	----			----	----
Equipment	5,000			5,000	
Other					

2. Explanation of above estimates.

Personal Services - 1 FTE Data Entry Operator
Current Expenses - Fringe Benefits @ 25%
Equipment - Computer equipment

3. Objectives of these rules:

To implement, consolidate and update the financial reporting requirements contained in W.Va. Code §§ 16-29B-1 et seq. and 16-5F-1 et seq.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A - The agency is funded by special revenues.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

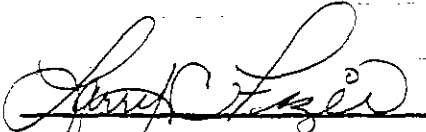
The funding for the additional staff person is from funds appropriated by the legislature and provided by assessments paid by the acute care hospitals in the state.

C. Economic Impact on Citizens/Public at Large.

The financial data collected pursuant to this rule will assist the agency in reviewing the financial status of health care facilities and accordingly assist in containing health care costs to the public.

Date June 17, 1991

Signature of Agency Head or Authorized Representative



Larry C. Fizer, Chairman

DATE: June 17, 1991

FILED

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

JUN 17 PM 4: 04

FROM: West Virginia Health Care Cost Review Authority

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

EMERGENCY RULE TITLE: Financial Disclosure Rule

1. Date of filing: June 17, 1991
2. Statutory authority for promulgating the emergency rule: W.Va. Code §§ 16-29B-8(a)(1), 17, 18 and 23; Code § 16-5F-3
3. Date of filing of proposed legislative rule: June 17, 1991
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
Repeals § 65 CSR 13
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.
See response to #8

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.

H.B. 2194, effective March 20, 1991, mandates the Health Care Cost
Review Authority to implement rules to require financial disclosure
from ambulatory health and surgical facilities, rehabilitation facilities,
home health agencies, etc. as well as hospitals and nursing homes. In
addition the law requires all organizations related to these entities to
file financial information. This information is necessary to assist the
agency in containing health care costs in the state. Furthermore, W.Va.
Code §16-29B-8(a)(1) grants the agency authority to file emergency rules.

FILED

TITLE 65
WEST VIRGINIA LEGISLATIVE RULE
HEALTH CARE COST REVIEW AUTHORITY
EMERGENCY
SERIES 13

1991 JUN 17 PM 4: 04

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Title: FINANCIAL DISCLOSURE RULE

S65-13-1 General

1.1. Scope - This legislative rule implements the provisions of the Health Care Facility Financial Disclosure Act found at West Virginia Code §§16-5F-1 et seq., and the financial reporting requirements of Code §§16-29B-1 et seq. This rule further repeals and replaces "Financial Disclosure Rule," S65 C.S.R. 13 (1989).

1.2. Authority - W. Va. Code §16-5F-3; §§16-29B-8(a), 17, 18, and 23.

1.3. Filing Date - June 17, 1991.

1.4. Effective Date - _____

1.5. This legislative rule repeals and replaces "Financial Disclosure Rule," S65 C.S.R. 13 (1989).

1.6. This rule shall not be construed to require duplicative filings of any reports, records, data, or other information required to be filed with the board pursuant to any other statute or rule. However, the board may require the filing of the reports, records, data or other information required by this rule, even if the information is duplicative, if the board cannot easily ascertain the information to be provided by these rules in any other material previously filed with the board.

§65-13-2 - Definitions

2.1. "Act" means the Health Care Facility Financial Disclosure Act, W. Va. Code §§16-5F-1 et seq.

2.2. "Annual report" means an annual financial report which includes the basic financial statements for the fiscal year of the covered facility or related organization. The financial statement of not for profit and government health care entities consist of a balance sheet, a statement of revenues and expenses of general funds, a statement of changes in fund balances, a statement of cash flows of general funds and a statement of cash flows of restricted funds of government health entities. The basic statement of investor owned health care facilities are similar to those of other investor owned entities. The report shall be prepared by an independent accountant or the auditor of the covered facility or related organization.

2.3. "Board" means the Health Care Cost Review Authority established pursuant to W. Va. Code §16-29B-5.

2.4. "Covered facility" means any hospital, skilled nursing facility, kidney disease treatment center (including a free-standing hemodialysis unit), nursing facility, ambulatory health care facility (not to include county health departments or those free clinics that provide all of their services without cost to the patient), ambulatory surgical facility, home health agency, rehabilitation facility, health maintenance organization or community mental health or mental retardation facility, whether under public or private ownership or as a profit or nonprofit organization and whether or not licensed or required to be licensed in whole or in part by the state.

2.5. "Hospital" means any health care facility licensed as such pursuant to W. Va. Code §16-5B-1 and any acute care facility operated by the State which is primarily engaged in providing inpatients, by or under the supervision of a physician, diagnostic and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons, or rehabilitation services for the rehabilitation of injured, disabled or sick persons. The term "hospital" also includes, but is not limited to, specialty hospitals such as acute care psychiatric hospitals, tuberculosis hospitals and rehabilitation hospitals. The term "hospital" does not include federally owned or operated facilities or state owned or operated mental health or long-term care facilities.

2.6. "Related organization" means an organization, whether publicly owned, nonprofit, tax-exempt or for-profit, related to a covered facility through common membership, governing bodies, trustees, officers, stock ownership, family members, partners or limited partners, including but not limited to subsidiaries, foundations, related corporations and joint ventures. For the

purposes of this subsection family members shall mean brothers and sisters whether by the whole or half blood, spouse, ancestors and lineal descendants. The term "related organization" also means any subsidiary, foundation, related corporation, joint venture or other similar organization if the organization controls or is controlled by a covered facility through contracts or other legal documents that allow the organization the authority to direct any of the covered facility's activities, management or policies, or allows the covered facility to direct any of the organization's activities, management or policies. A subsidiary, foundation, related corporation, joint venture or other similar organization shall also be considered a "related organization" in the following situations: (a) The organization has solicited funds in the name of the health care entity with the express or implied approval of the covered facility, and any portion of said funds were intended by the contributor, or otherwise required, to be used for the benefit of the covered facility; (b) The covered facility has transferred or may transfer resources to the organization or any of the organization's resources are held for the benefit of the covered facility; (c) The organization has transferred or may transfer resources to the covered facility or any of the covered facility's resources are held for the benefit of the organization; (d) The covered facility has assigned certain of its functions to the organization, which is operating primarily for the benefit of the covered facility; (e) The organization is wholly-owned or was created by the covered facility, and the covered facility receives any of the profits of the organization; or (f) The covered facility is wholly-owned or was created by the organization, and the organization receives any of the profits of the covered facility.

2.7. "Rates" means all rates, fees or charges imposed by any covered facility or related organization for health care services.

2.8. "Records" includes accounts, books, charts, contracts, documents, files, maps, papers, profiles, reports, annual and otherwise, schedules and any other fiscal data, however recorded or stored.

2.9. "Trial balance" means a list of the debit and credit balances of all accounts in the hospital's general ledger after audit adjustments as of fiscal year end.

§65-3-3 Annual Public Disclosure Report

3.1. Within one hundred twenty (120) days after the end of its fiscal year, each covered facility and related organization shall file with the board and publish as a Class I legal advertisement an annual disclosure report prepared by an independent accountant or the auditor of the covered facility or related organization. The published annual disclosure report shall be required to contain only those items specified in section 3.5 of this rule and prepared in accordance with generally accepted accounting principles. The publication shall comply with the provisions of W. Va. Code §59-3-2 and shall be placed in a qualified newspaper published in the county where the covered facility or related organization is located. The board may, upon good cause shown, extend the period for publication. A copy of the advertisement must be filed with the board within thirty (30) days of its publication.

3.2. If there is more than one qualified newspaper of general circulation in the county where the covered facility or related organization is located, the publication shall be in the newspaper with the largest circulation.

3.3. If a qualified newspaper is not published in the county where the covered facility or related organization is located, the publication shall be in a qualified newspaper published outside the county but which has the widest circulation in the county where the covered facility or related organization is located.

3.4. The annual public disclosure report shall be for each individual covered facility or related organization. If a covered facility or related organization is a division or subsidiary of another entity which owns or operates other covered facilities or related organizations, the annual public disclosure report shall be for the specific division or subsidiary and not for the aggregate of the covered facilities or related organizations of the other entity.

3.5. The annual public disclosure report shall include a complete statement of the following:

3.5.1. Balance sheet.

3.5.2. Statement of income (revenues and expenses).

3.5.3. Statement of changes in retained earnings (fund balances).

3.5.4. A statement of ownership for persons owning more than five percent (5%) of the capital stock outstanding and the dividends paid thereon, if any, and to whom paid for the reporting period unless the covered facility or related organization is duly registered on the New York stock exchange, American stock exchange, any regional stock exchange or its stock is actively traded over the counter. The statement shall also contain a disclosure of ownership by any parent company or ownership of any subsidiary.

3.5.5. A prominent notice that the details concerning the contents of the advertisement, together with the other reports, statements and schedules required to be filed with the board are available for public inspection and copying at the board's office.

§65-3-4 Statements, Schedules, Reports To Be Filed With Board

4.1. Every covered facility and related organization shall file with the board the following statements, schedules or reports within one hundred twenty (120) days after the end of its respective fiscal year or at such other times as may be required by the board in writing or pursuant to these rules. The board may, for good cause shown, extend the time for filing.

4.1.1. A complete audited financial report for the preceding fiscal year prepared and presented by an independent accountant or the auditor of the covered facility or related organization. The report shall be accompanied by all notes, schedules and documents as required by the audit guidelines of the American Institute of Certified Public Accountants. If an audited financial

report is not prepared by a covered facility or related organization, then that facility or organization shall provide the board a statement of income (revenues and expenses), a statement of changes in retained earnings (fund balances), a statement of cash flows, a balance sheet for the reporting period and/or any other statement as required by generally accepted accounting principles.

4.1.2. A statement of services available and services rendered. If the facility is a nursing home, it shall complete and return to the board a copy of its Annual Report of Nursing Homes within thirty (30) days of its receipt of the blank form. If the facility is a hospital, it shall complete and return to the board a copy of its annual survey report for the American Hospital Association within fifteen (15) days of rendering the report to the Association.

4.1.3. The approved budget and the annual capital expenditures budget for the forthcoming fiscal year which sets forth the total financial needs of the covered facility or related organization and the resources available or expected to become available to meet such needs. Budget formats may be that customarily used by the facility or organization for its own internal purposes but must, at a minimum, state the projected patient revenues and expenses by individual cost center and the details of other anticipated operating and non-operating revenues and expenses.

4.1.4. A complete schedule of its current rates for all patient services provided by the covered facility or related organization at the close of its fiscal year.

4.1.5. If the covered facility or related organization is certified under the federal medicare or medicaid programs, a complete copy of all cost reports submitted to the medicaid state agency, medicare intermediaries or other state agency administering legislative directed funding. If such report is not prepared by the facility or organization within a given fiscal year, then it shall file a complete schedule of costs allocated to each category of costs in accordance with standards established by the state medicaid office.

4.1.6. A statement of all charges, fees or salaries for goods or services rendered to the covered facility or related organization, together with the name and address of each entity providing the goods or services, which exceed in total the sum of fifty-five thousand dollars (\$55,000.00) for the reporting period. This requirement does not apply to payments made or due as a result of services rendered to patients, clients or residents to whom the covered facility typically provides services.

4.1.7. A statement of all charges, fees or other sums collected by the covered facility or related organization for or on account of any person, firm, partnership, corporation or other entity, however structured, together with name and address of each entity from whom a charge, fee or other sum was collected, which exceeds in total the sum of fifty-five thousand dollars (\$55,000.00) during the reporting period. This requirement does not apply to payments made or due as a result of services rendered to patients, clients or residents to whom the covered facility typically provides services.

4.1.8. If a covered facility, related organization or its parent entity must file a form 10K with the Federal Securities and Exchange Commission, then it shall file a copy of the 10K form with the board on an annual basis.

4.1.9. A copy of all income tax returns and applicable substitutes (e.g. Form 990) required to be filed by federal and state laws.

4.1.10. A trial balance for the reporting period. Covered facilities or related organizations which are not hospitals, either in whole or in part, shall file a trial balance only if requested to do so in writing by the board. If such a request is made, the trial balance shall be filed within fifteen (15) days of the board's request.

4.1.11. A copy of all contracts that the facility or organization enters into with any individual or group of health care providers for the provision of inpatient or outpatient services together with a schedule of rates to be charged by the health care providers for their services under the contract or charged by the covered facility for those services by the provider. Simple admitting privileges to the facility shall not be construed as such a contract.

4.2. The statements, schedules, reports or other information required to be filed pursuant to section 4.1 of these rules shall be filed for each individual covered facility or related organization covered by this section. If a covered facility or related organization is a division or subsidiary of another entity which

owns or operates other covered facilities or related organizations, the statements, schedules, reports or other information shall be for the specific division or subsidiary and not for the aggregate of the covered facilities or related organizations of such other entity.

4.3. Every hospital shall also file the following with the board:

4.3.1. Within one hundred twenty (120) days after the end of its fiscal year, a copy of the Health Care Cost Review Authority Financial Report (Uniform Reporting System), adopted pursuant to W. Va. Code §16-29B-17, including the wage and salary survey.

4.3.2. A complete copy of the uniform billing form shall be submitted at intervals as specified by the board, but shall not exceed a monthly basis, for each and every one of its inpatients including those that are incurred by the federal medicare and medicaid programs. If the board obtains some of that data from another source, the board may excuse the hospital from providing any such portion received from such source.

The uniform billing form must be submitted to the board or its agent on Industry Standard 1600 BPI tape or similar computer tape, diskette or other electronic transfer means in the format as designated by the board. Hard copies of the uniform billing data shall not be submitted without the prior approval of the board.

4.3.3. Upon entry of an order by the board, a complete copy of the uniform billing form shall be submitted at intervals as specified by the board, but shall not exceed a monthly basis, for each and every one of its outpatients including those that are incurred by the federal medicare and medicaid programs. If the board obtains some of that data from another source, the board may excuse the hospital from providing any such portion received from such source.

The uniform billing form must be submitted to the board or its agent on Industry Standard 1600 BPI tape or similar computer tape, diskette or other electronic transfer means in the format as designated by the board. Hard copies of the uniform billing data shall not be submitted without the prior approval of the board.

4.4. A related organization, as defined in section 2.6 of this rule, may receive an exemption from the reporting requirements of the Act and this rule if it meets each of the following requirements:

4.4.1. The related organization is not a covered facility and is not a health care provider of any type.

4.4.2. The related organization did not provide or receive any service from the covered facility.

4.4.3. The related organization paid no money to and received no money from the covered facility.

4.4.4. The related organization was not or is not established to provide any benefit to the covered facility, or vice-versa, as described in section 2.6 of this rule.

4.5. Any organization seeking an exemption pursuant to section 4.4 of this rule must file a written request for an exemption with the board within sixty (60) days after the end of its fiscal year. The written request must be by a duly authorized representative of the organization and must contain, at a minimum the following:

4.5.1. The identification of the applicant and the nature of its relationship with a covered facility.

4.5.2. A description of the related organization's purpose, operations, revenues and expenses.

4.5.3. A statement which establishes that the related organization meets each of the requirements outlined in section 4.4 of this rule which would entitle it to such an exemption.

4.6. Any exemption granted a related organization pursuant to section 4.5 of this rule shall be valid only for the reporting period for which an exemption was granted.

§65-13-5 Additional Information

5.1 Whenever further records, data or other information are deemed necessary to verify the accuracy of any information set forth in any statement, schedule or report filed by a covered facility or related organization under the provisions of the Act or these rules, the board may require the production of such records, data or other information.

5.2. The board may require any covered facility or related organization to file any additional records, data, reports or other information concerning or affecting the costs incurred in rendering health care services by the facility or organization or concerning or affecting the cost of health care services generally in this state.

5.3. Any request for records, data, reports or other information by the board pursuant to this section shall be in writing, and the covered facility or related organization shall be given a minimum of ten (10) days within which to file the requested material.

§65-13-6 Short Form

The board shall develop, on or before the 1st day of October, 1992, a short form by which certain covered facilities may report the information required by section 4 of this rule. The following covered facilities may report on the short form: (a) kidney disease treatment centers (including a free-standing

hemodialysis unit); (b) ambulatory health care facilities; (c) ambulatory surgical facilities; and (d) home health agencies.

§65-13-7 Hearing

The board may conduct hearings as part of any investigation it undertakes pursuant to the Act or these rules. The board may subpoena witnesses, papers, records, documents and any other information or data it may require in its investigation. The board may administer oaths or affirmations during the course of such proceedings.

§65-13-8 Confidentiality

8.1. The board and its officers, employees and agents shall maintain the confidentiality of any and all medical or individual information personally identifiable to a patient or a consumer of health services, whether directly or indirectly. This does not prohibit the board from releasing statistical data or reports based upon these records.

8.2. Tax returns required to be filed pursuant to subsection 4.1.10 of these rules shall remain confidential, and no part shall be divulged or made known by the board or its officers, employees or agents. This does not prohibit the board from releasing statistical data or reports based upon these records.

§65-13-9 Public Access To Information

Except for those documents held confidential pursuant to section 8 of these rules, all other reports, statements, schedules or other information filed with the board pursuant to the Act or these rules shall be open to public inspection and examination during the regular business hours of the board. Copies of any report, statement, schedule or other information shall be made available to the public upon request. The board may charge its reasonable and customary fees for making copies of any such document.

§65-13-10 Injunctions

If any covered facility or related organization fails to file or publish any report, statement, schedule or other information required pursuant to the Act or these rules, the board may request that its general counsel or the office of the attorney general file an action in the circuit court of the county in which the covered facility or related organization is located for the issuance of a mandatory injunction to compel compliance.

§65-13-11 Penalties For Failure To Comply

Any covered facility or related organization which fails to make and transmit to the board any report, statement, schedule or other information required by the Act or these rules, or fails to publish or distribute any report so required, shall be notified by the board of such delinquency by certified mail, return receipt requested. If the delinquency continues for more than ten (10)

days after receipt of the notice, the delinquent facility or organization shall be subject to a penalty up to one thousand dollars per violation for each day thereafter that the delinquency continues. The penalty shall be imposed by the board, and if the facility or organization fails to pay said penalty within the time specified by the board, the penalty shall be recovered by the board through the attorney general or its general counsel in a civil action filed in the circuit court where the delinquent facility or organization is located. Any penalty received or recovered by the board shall be paid into the state treasury to the account of the general fund. The review of any final judgment or order of the circuit court shall be by appeal to the West Virginia Supreme Court of Appeals.

§65-13-11 Severability

If any provision(s) of these rules or the application thereof to any entity or circumstance shall be held invalid, the invalidity shall not affect the provisions or applications of this rule which can be given effect without the invalid provision(s) or application and to this end the provisions of these rules are declared to be severable.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

**FILED IN THE OFFICE OF
THE SECRETARY OF STATE**

THIS DATE July 1, 1991
ADMINISTRATIVE LAW DIVISION

July 1, 1991

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

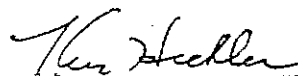
AGENCY: Health Care Cost Review Authority

RULE: New Rules, Series 13 Financial Disclosure Rule

DATE RULE FILED AS AN EMERGENCY RULE: June 17, 1991

DECISION NO. 36-91

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.



KEN HECHLER
Secretary of State

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Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

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STATE OF WEST VIRGINIA

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(Plus all the volunteer
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DECISION

EMERGENCY RULE DECISION (ERD 36-91)

AGENCY: Health Care Cost Review Authority
RULE: New Rule, Series 13, Financial Disclosure Rule
FILED AS AN EMERGENCY RULE: June 17, 1991

- par. 1 The Health Care Cost Review Authority (HCCRA) has filed the above new rule as an emergency.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The HCCRA filed this emergency rule with supporting documents with the Secretary of State June 17, 1991 and with the LRMRC June 17, 1991.

par. 7 It is the determination of the Secretary of State that the HCCRA has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §16-5F-3 reads in part:

(a) In addition to the powers granted to the board elsewhere in this article, the board shall have the powers as indicated by this section and it shall be its duty to:

(1) Promulgate rules and regulations in accordance with the provisions of §29A-3-1 et seq. of this code, to implement and make effective the powers, duties and responsibilities contained in the provisions of this article

par. 9 It is the determination of the Secretary of State that the HCCRA has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the HCCRA are as follows:

HB 2194, effective March 20, 1991, mandates the Health Care Cost Review Authority to implement rules to require financial disclosure from ambulatory health and surgical facilities, rehabilitation facilities, home health agencies, etc., as well as hospitals and nursing homes. In addition the law requires all organizations related to these entities to file financial information. This information is necessary to assist the agency in containing health care costs in the state. Furthermore, W. Va. Code §16-29B-8(a)(1) grants the agency authority to file emergency rules.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "immediate preservation of public peace, health, safety or welfare" and "prevent substantial harm to public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 36-91 or ERD 36-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Health Care Cost Review Authority, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 1, 1991
ADMINISTRATIVE LAW DIVISION