

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

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Form #8

Effective Date

Jan. 22, 1992

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 65

DATE EMERGENCY RULE WAS ORIGINALLY FILED: June 17, 1991

IS THIS THE FIRST EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

yes

IS THIS THE SECOND EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

DATE OF FIRST EMERGENCY AMENDMENT: January 10, 1992

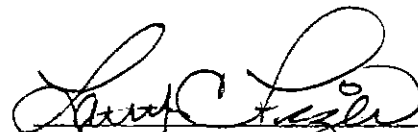
SERIES NUMBER OF RULE: 13 TITLE OF RULE: Financial Disclosure

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

The emergency amendment contains changes made by the Legislative Rule-Making Review Committee. The emergency amendment is required to make the emergency rule currently in effect consistent with the proposed legislative rule as modified by the Committee.

Use Additional Sheets If Necessary.



Signature  
LARRY C. FIZER, Chairman

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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.

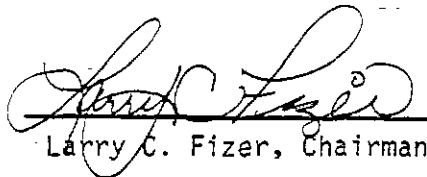
The funding for the additional staff person is from funds appropriated by the legislature and provided by assessments paid by the acute care hospitals in the state.

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

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

Title: FINANCIAL DISCLOSURE RULE

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§65-13-1 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 is not applicable to nor does it include contracts with third-party payors. This rule further repeals and replaces "Financial Disclosure Rule," §65 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 - \_\_\_\_\_.

1.4 Effective Date - \_\_\_\_\_.

1.5 This legislative rule repeals and replaces "Financial Disclosure Rule," §65 C.S.R. 13 (1989).

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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 statements 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 statements of investor owned health care facilities are similar to those of other investor owned entities in accordance with generally accepted

accounting principles. ~~The report shall be prepared by a~~ An independent accountant or the auditor of the covered facility or related organization shall prepare the report.

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. A covered facility does not mean the private office practice of one or more health professionals licensed to practice in this state pursuant to W. Va. Code, §30-1-1 et. seq., unless the practice is certified as an ambulatory surgical facility or center.

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, spouses, ancestors and lineal descendants.

~~The term "related organization" also means any subsidiary, foundation, related corporation, joint venture or other similar organization if~~ An organization is considered to be related to a covered facility if one of the following conditions is met:

(a) ~~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)~~(b) The organization has solicited funds in the name of the ~~health care entity~~ covered facility with the express or implied approval of the covered facility, and ~~any~~ a substantial portion of said the funds were was intended by the contributor, or was otherwise required, to be used for the benefit of the covered facility;

~~(b)~~(c) The covered facility has transferred ~~or may~~ transfer resources to the organization ~~or any~~ and a substantial portion of the organization's resources are is held for the benefit of the covered facility;

~~(c)~~(d) The organization has transferred ~~or may transfer~~ resources to the covered facility ~~or any~~ and a substantial portion of the covered facility's resources are is held for the benefit of the organization;

~~(d)~~(e) The covered facility has assigned certain of its functions to the organization, which is operating primarily for the benefit of the covered facility;

~~(e)~~(f) 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)~~g) The covered facility is wholly-owned or was created by the organization, and the organization receives any of the profits of the covered facility.

(h) In the event of the dissolution of the related entity, substantially all of the assets of the entity would become the property of the creating entity.

2.7. "Rates" means all rates, fees and 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 the end of the 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 subsection 3.5 of this rule and shall be prepared in accordance with generally accepted accounting principles. The publication shall comply with the provisions of W. Va. Code §59-3-2 and the covered facility or related organization shall place the report ~~shall be placed~~ in a qualified newspaper published in the county where ~~the covered facility or related organization~~ it is located. The board may, upon good cause shown, extend the period for publication. A The covered facility or related organization must file 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 covered facility or related organization shall publish the report~~ 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~~ the covered facility or related organization shall publish the report 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~~ or combined 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. A Bbalance sheet.

3.5.2. A Sstatement of income (revenues and expenses).

3.5.3. A Sstatement 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, the 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. Nothing in this rule requires an individual investor with less than a forty percent (40%) ownership interest in a health care facility or related organization to submit a personal financial statement.

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 shall accompany the report. 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~~ those 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~~ a 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. At 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 the 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 covered facility or related organization shall file 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~~ are not construed as such a contract.

4.2. The statements, schedules, reports or other information required to be filed pursuant to subsection 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. On a monthly basis or at intervals specified by the board, a complete copy of the Uniform Bill-82 (UB-82) data 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 patients programs. If the board obtains some of that data from another source for a portion of the data, the board may excuse the hospital from providing that portion any such portion received from such source.

4.3.3. The uniform billing form must be submitted hospital must submit the UB-82 data 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. A hospital shall not submit H hard copies of the uniform billing UB-82 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 1500 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.~~

S65-13-5 Exemption

4.45.1. A related organization, as defined in subsection 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:

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

4.4.2.5.1.2. The related organization did not provide to or receive any from the covered facility any material service.

~~4.4.3.5.1.3.~~ The related organization ~~paid no money to and received no money from~~ did not transfer to or receive from the covered facility substantial funds or resources.

~~4.4.4.5.1.4.~~ The related organization was not or is not established to provide ~~any~~ a substantial benefit to the covered facility, or vice-versa, as described in subsection 2.6 of this rule.

~~4.5.5.2.~~ Any organization seeking an exemption pursuant to this section 4.4 5 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~~ A duly authorized representative of the organization must make the request in writing and the request must contain, at a minimum, the following:

~~4.5.1.5.2.1.~~ The identification of the applicant and the nature of its relationship with a covered facility.

~~4.5.2.5.2.2.~~ A description of the related organization's purpose, operations, revenues and expenses.

~~4.5.3.5.2.3.~~ A statement which establishes that the related organization meets each of the requirements

outlined in subsection 4.45.1. of this rule which would entitle it to such an exemption.

4.65.3. Any exemption granted a related organization pursuant to subsection 4.55.2 of this rule ~~shall be~~ is valid only for the reporting period for which an exemption was granted.

#### §65-13-56 Additional Information

56.1 Whenever further records, data or other information are ~~deemed~~ considered 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.

5.6.2. 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.

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

§65-13-67 Short Form

The form 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.

§65-13-78 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.

§65-13-89 Confidentiality

§9.1. 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 t~~ The board from may release ing statistical data or reports based upon these records.

§9.2. Tax returns required to be filed pursuant to subsection 4.1.109 of ~~these~~ this rules shall remain confidential, and ~~no part shall be divulged or made known by~~ the board or its officers, employees or agents shall not divulge or make any part known. ~~This does not prohibit t~~ The board from may release ing statistical data or reports based upon these records.

§65-13-910 Public Access to Information

Except for those documents held confidential pursuant to section § 9 of these rules, the board shall keep all other reports, statements, schedules or other information filed with the board pursuant to the Act or ~~these~~ this rules ~~shall be open to public inspection and examination during the regular business hours of the board.~~ The board shall make

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~~11     Injunctions

If any covered facility or related organization fails to file or publish any report, statement, schedule or other information 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~~12     Penalties For Failure To Comply

The board shall notify A 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~~ this rules, or fails to publish or distribute any report as 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~~ is subject to a penalty up to one thousand dollars per violation for each day thereafter that the delinquency continues. The board shall impose the penalty ~~shall be imposed by the board,~~ and if the facility or organization fails to pay ~~said~~ the penalty within the time specified by the board, the board shall recover 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 of the county where the delinquent facility or organization is located. The board shall pay ~~A~~ 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.

§65-13-1413      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)

January 22, 1992

### NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Health Care Cost Review Authority

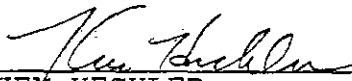
RULE: New Rule, Series 13, Financial Disclosure

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

DATE FIRST EMERGENCY AMENDMENT FILED: January 10, 1992

DECISION NO. 2-92

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.

  
KEM HECHLER  
Secretary of State

FILED  
1992 JAN 22 PM 2:17

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Charleston 25305

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Special Assistant

(Plus all the volunteer  
help we can get)

#### DECISION

#### EMERGENCY RULE DECISION (ERD 2-92)

AGENCY: Health Care Cost Review Authority  
RULE: New Rule, Series 13, Financial Disclosure  
ORIGINALLY FILED AS AN EMERGENCY RULE: June 17, 1992  
FIRST EMERGENCY AMENDMENT FILED: January 10, 1992

- par. 1 The Health Care Cost Review Authority (HCCRA) has filed the above new rule as an emergency rule.
- 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 thirty-five 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 January 10, 1992 and with the LRMRC January 10, 1992.

par. 7 It is the determination of the Secretary of State that the LRMRC 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(1) reads:

(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:

The emergency amendment contains changes made by the Legislative Rule Making Review committee. The emergency amendment is required to make the emergency rule currently in effect consistent with the proposed legislative rule as modified by the Committee.

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).

par. 14

This decision shall be cited as Emergency Rule Decision 2-92 or ERD 2-92 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

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