

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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1991 AUG -9 PM 3:48

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 65

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

AMENDMENT TO AN EXISTING RULE: YES NO

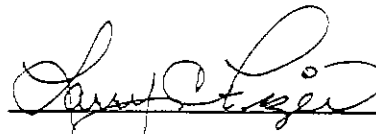
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 13

TITLE OF RULE BEING PROPOSED: Financial Disclosure Rule

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



LARRY C. FIZER
Chairman

12.50

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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1991 AUG -9 PM 3:49

Rule Title: Financial Disclosure Rule

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Type of Rule: X 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.

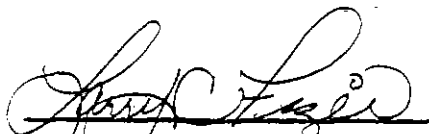
The funding for the additional staff person is from funds appropriated by the legislature and provided by assessments paid by the acute care hospitals in the state.

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

FILED

1991 AUG -9 PM 3:49

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

DATE: August 9, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Health Care Cost Review Authority

LEGISLATIVE RULE TITLE: Financial Disclosure Rule

1. Authorizing statute(s) citation W. Va. Code, §16-5F-3, 16-29B-8, 17, 18 and 23.

2. a. Date filed in State Register with Notice of Hearing:
June 17, 1991

b. What other notice, including advertising, did you give of the hearing?

Charleston newspaper, West Virginia Hospital Association, Association of Community Health Centers, West Virginia Health Care Association, West Virginia State Medical Association. HCCRA

c. Date of hearing (s): payors and other interested persons,

July 18, 1991

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)

August 9, 1991

f. Name and phone number of agency person to contact for additional information:

Marianne K. Stonestreet

General Counsel

343-3701

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

NORTHERN GREENBRIER HEALTH CLINIC, INC.

WILLIAMSBURG HEALTH CLINIC

Sinking Creek Road - P.O. Box 10
Williamsburg, West Virginia 25391
Phone (504) 845-7872

July 17, 1991

Health Care Cost Review Authority
100 Dee Drive
Charleston, WV 25301

Dear HCCRA Members:

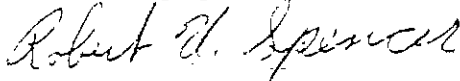
We, the directors of the Northern Greenbrier Health Clinic, Inc., have reviewed the Financial Disclosure Rule Regulations contained in WV Code 16-5F1. We find these regulations to be a duplication of the regulations that we are obligated to follow through the federal, state and local mandates.

All of our financial information is available to the public presently due to our status as a non-profit health clinic. As we are a small non-profit health clinic providing services to patients who are indigent, we do not have extensive funds for advertising as will be required under these new regulations.

We feel that these regulations will only duplicate our disclosure process that is present now. We supply all financial information to the federal government, the state government and state funding agencies, the medicare agency, the medicaid agency that fund in part our clinic operation.

We ask that you reconsider the disclosure process in order that duplication does not result and the extensive costs to be paid by primary care health clinics who are non-profit.

Sincerely yours,



Robert Spencer
Vice-President

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

FILED
1991 AUG -9 PM 3:50
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Title: FINANCIAL DISCLOSURE RULE

§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 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).

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 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. 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, spouse, 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 held for the benefit of the covered facility;

(e)(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 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 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. Nothing in this rule shall be construed to require 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. 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 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. 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.

§65-13-5 Exemption

4.4.5.1. 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 or receive any a material from the covered facility.

~~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 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 duly authorized representative of the organization and 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 4.4 5.1 of this rule which would entitle it to such an exemption.

~~4.6.~~ 5.3. Any exemption granted a related organization pursuant to subsection 4.5 5.2 of this rule shall be valid only for the reporting period for which an exemption was granted.

S65-13-~~5~~ 6 Additional Information

~~5~~ 6.1 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~~ 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.

~~5~~ 6.3. 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 7 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 8 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 9 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 the board from releasing statistical data or reports based upon these records.

§ 9.2. Tax returns required to be filed pursuant to subsection 4.1.10 9 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. This does not prohibit the board from releasing statistical data or reports based upon these records.

§65-13-9 10 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 11 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 12 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 13 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.



July 16, 1991

Larry C. Fizer
Chairman
Health Care Cost Review Authority
100 Dee Drive
Charleston, West Virginia 25311

Dear Mr. Fizer:

Attached please find correspondence from Wheeling Health Right, Inc. regarding the financial disclosure rule. They have asked that this letter be presented as part of the record at the public hearing of July 18, 1991. Accordingly, I am forwarding this letter to your office.

Thank you.

Sincerely,

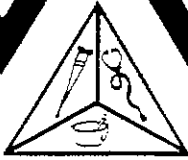
Jill L. Hutchinson
Executive Director

JLH:pm

Attachment

WHEELING HEALTH RIGHT, INC. A Community Supported Free Clinic

88 - 14th STREET • WHEELING, WV 26003 • TELEPHONE (304) 233-9323



TO: Health Care Cost Review Authority
From: Kenneth R. Goerg, Executive Director
Wheeling Health Right, Inc.
Date: July 2, 1991
Subject: Financial Disclosure Rule

As executive director of a non-profit, free charitable clinic located in West Virginia, I would like to state my views regarding the financial disclosure rule. I think it worth noting that Wheeling Health Right, as a free clinic, is funded primarily by the State of West Virginia and does not charge for any of the medical services which it provides to the poor.

I have read the financial disclosure rule as proposed and note that it calls for a considerable amount of administrative work as well as expense in order to satisfy the requirements as set forth. I have to believe that it was the legislature's intent to require such intricate reporting mechanism of hospitals and other large health care facilities, but not small free clinics and primary care centers.

Accordingly, our understanding is that it is not the legislative intent that the provisions of the health care financial disclosure act cover primary care clinics in West Virginia. Meeting these requirements would create an enormous hardship for primary care clinics, and most especially the free clinics, for we lack the administrative structure, manpower, and budgets needed to satisfy the financial rule as proposed. In our case, our agency operates with just one administrator and a very small budget. We charge no fees to our patients, receive no reimbursements from such entities as insurance companies, and are strictly charitable in providing services. In our view, being subject to this rule would create an unnecessary burden in time and expense to an agency for which this rule was not intended. I urge you to make it explicit that primary care centers and free clinics in West Virginia are exempt from the financial disclosure rule.



GRAFTON-TAYLOR COUNTY HEALTH DEPARTMENT

P. O. Box 15 716 W. Main St.

Grafton, West Virginia 26351

304-265-1200

July 12, 1991

Larry C. Fizer, Chairman
Health Care Cost Review Authority
100 Dee Drive, Suite 201
Charleston, West Virginia 25311

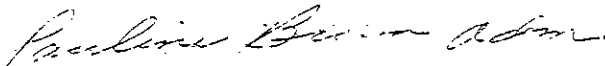
Dear Chairman Fizer:

Please refer to the new "Financial Disclosure Law" covered by Article 5F. (16-5F-1).


I feel that Health Department Home Health Agencies should be excluded from this disclosure law because:

1. Our records ARE public information at the state health department level.
2. We ARE audited by the State Tax Office.
3. We HAVE a yearly budget which is filed with the state office.
4. A "PIP" (cost review) is prepared by a CPA firm quarterly and filed with our Medicare Intermediary.
5. A yearly "Cost Report" is prepared by a CPA firm and filed with our Medicare Intermediary.
6. All rates are set/determined by our Medicare Intermediary.
7. Sixteen (16) Health Department Home Health Agencies form the West Virginia Council Of Home Health Agencies and operate under the jurisdiction of the West Virginia Department of Health and a Medicare Intermediary.

Sincerely,



Pauline V. Brown, RN, C
Nursing Director I/Administrator.

7-16-91 

COMMENTS OF
WEST VIRGINIA STATE MEDICAL ASSOCIATION
ON PROPOSED FINANCIAL DISCLOSURE RULE

July 18, 1991

Good Morning.

I am George Rider, Executive Director of the West Virginia State Medical Association. I appear before the Board today at the direction of Dr. Michael M. Stump, President, on behalf of the State Medical Association and its physician members who practice medicine in the State of West Virginia.

The State Medical Association has received indications that the proposed Financial Disclosure Rule may be interpreted and used in a manner that will subject physicians in private practice in this State to the financial reporting requirements. We fervently hope that these indications are not correct. To apply the financial reporting requirements to private physician practices would be contrary to the State's statutory scheme, and would violate the constitutional rights and privileges of physicians engaged in the private practice of medicine in West Virginia. Furthermore, in our opinion, a primary effect of the application of financial reporting requirements to private medical practices would be to impose an additional reason for physicians to move away from West Virginia, thereby exacerbating the existing problem of health care availability throughout this State.

The suggestion that the proposed rule may be interpreted to apply to private medical practices apparently arises from the fact that the term "covered facility" is defined as including "ambulatory health care facility" and "ambulatory surgical facility", neither of which terms are defined in the proposed Rule. Therefore, it has been suggested, the proposed Rule may be interpreted to include private medical practices by applying the broadest possible definitions to the terms "ambulatory health care facility" and "ambulatory surgical facility".

However, although those terms are not defined in Article 5F --- the Health Care Facility Financial Disclosure statute --- they are defined elsewhere in the West Virginia Code. Specifically, Section 16-2D-2(b) of the West Virginia Code defines "ambulatory health care facility" as not including "the private office practice of any one or more health professionals licensed to practice in this State pursuant to the provisions of Chapter 30 of this Code." Likewise, Section 16-2D-2(c) defines "ambulatory surgical facility" as not including "the private office practice of any one or more health professionals licensed to practice surgery in this State pursuant to the provisions of

Chapter 30 of this Code." Although these definitions contain exceptions for the very limited purpose of making private office practices subject to certificate of need requirements, it is clear that the fundamental definition of "ambulatory health care facility" and "ambulatory surgical facility" does not include private office practices.

The definitions of these terms contained in Section 16-2D-2 of the West Virginia Code are, to my knowledge, the only definitions of these terms contained anywhere in the West Virginia Code. Therefore, if the proposed rule were to be interpreted to include private office practices within the terms "ambulatory health care facility" and "ambulatory surgical facility", such interpretation would be inconsistent with the West Virginia statutory scheme.

The intent of 16-5F of the West Virginia Code is to allow this Commission to determine the reasonableness of costs of health services provided by affected facilities and to establish charges for these facilities. Nowhere in the statutes is such authority granted to this Commission with respect to private physician practices. If physicians in private practice are required to provide financial data, but the Commission cannot impose any action, then the only purpose for this effort is to harass the physicians in this State. Furthermore, even if the new statute were to be interpreted to give the Board rate-setting authority over private medical practitioners, then West Virginia would be unique among the 50 states in having such authority. In my opinion, West Virginia would also be unique in having virtually no physicians willing to engage in private practice in this State.

In addition, to subject the men and women who engage in private medical practice in this State to the financial reporting requirements would violate those individuals' constitutional right of privacy. The constitutional right of privacy is protected and preserved for every citizen of West Virginia by both the State and Federal Constitutions. As the Board is aware, the financial disclosure requirements provide not only for the reporting of detailed financial information to the Board, but also requires publication of detailed financial information. To require those who practice medicine in this State to report and publish their personal financial information, would serve no function other than to harass them. Surely, this cannot be the purpose of the legislators or of the Board.

Not only would the application of the financial reporting requirements to private office practices constitute an invasion of privacy, but it would also violate the constitutional right of equal protection of the laws. To my knowledge, except for a person who holds public office, no individual in this State engaged in private business or private employment is required to report and publish his or her personal financial information. If the proposed rule is interpreted to apply to physicians' private

office practices, it would mean that those physicians would be the only individuals in this State subject to this type of requirement. Certainly, to single out private practicing physicians for such treatment cannot be considered equal protection under the laws.

Of equal concern is the practical effect of the proposed Rule. In my estimation, application of the financial reporting requirements to private office practices would also be absolutely counterproductive to the ongoing efforts to keep physicians available to all of the citizens of this State. It is already a fact that the average physician in private practice in this State earns almost 26% less than the national average for physicians in private practice. It is already a fact that keeping doctors in this State, much less attracting them to this State, is an ongoing problem. Compliance with the reporting requirements would subject the men and women engaged in the private practice of medicine in West Virginia to the harassment of having their private financial situations reported and published. Furthermore, it should be noted that the proposed Rule requires detailed, audited reports. Frankly, I would be surprised if many private medical practices even have the type of reports --- particularly audited reports --- that the proposed Rule would require. Thus, compliance with the proposed requirements by private medical practices would impose a significant burden, hardship and additional costs. All of this would simply add additional incentive for physicians to leave this State. Certainly, it would make any physician contemplating locating in West Virginia think twice about the matter.

In order to avoid all of these problems, the State Medical Association strongly urges that the proposed rule be amended to include, within its definitions, the definitions of "ambulatory health care facility" and "ambulatory surgical facility" contained in West Virginia Code Section 16-2D-2. Specifically, the proposed rule should be amended to define those terms to "not include the private office practice of any one or more health professionals licensed to practice in this State pursuant to the provisions of Chapter 30 of this Code." The amendment of the proposed rule to include this definition will not only make the proposed rule consistent with the definition of those terms in the West Virginia Code, but it will serve to clarify the proposed Rule in order to avoid the problems that I have outlined above.

I should also note that it has been conveyed to us that the Commission believes that a physician who serves on the board of a health facility would be required to submit financial data, because under these rules his or her private practice would be considered a "related organization".

Physicians serve on health facility boards for primarily two reasons. The first is to represent the interests of the medical staff associated with that particular facility. The second is to provide explanation and education to the lay members of the board

on issues that are of a professional nature. If the proposed Rule is applied in a manner that subjects a physician in private practice to the financial reporting requirements, merely because he or she happens to serve as one member of a healthcare facility board, then there will be few, if any, physicians willing to serve and provide the type of input needed by healthcare facility boards.

In closing, I must comment that it is easy for those of us who live in or near large metropolitan areas, such as Charleston, to take for granted the availability of physicians in private practice. We may be inclined to assume that we will always have access to physicians in private practice. I am not certain that such an assumption is warranted. But certainly, such an assumption is even less warranted when one considers the availability of private medical practices in the rural areas of this State. The problems of attracting and maintaining physicians to private practices in the rural areas of West Virginia are written about almost weekly in the local newspapers. If the proposed Rule is interpreted to apply financial disclosure requirements to private office practices in West Virginia, there is no doubt in my mind that it will result in intolerable pressure being placed on private physicians to leave West Virginia, and the effect upon thousands of citizens living in West Virginia will be devastating.

The citizens of this State deserve better. The men and women who elect to engage in the private practice of medicine in this State deserve better.

Therefore, the West Virginia State Medical Association urges the Board to amend the proposed Financial Disclosure Rule to clarify that "covered facilities" do not include private office practices.



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Mr. Larry Fizer
Chairman, Health Care Cost Review Authority
100 Dee Drive, Suite 201
Charleston, West Virginia 25311

The West Virginia Hospital Association wishes to thank the Health Care Cost Review Authority (hereinafter "the Authority" or "the Agency") for this opportunity to comment upon the Financial Disclosure Rule, 65 C.S.R. 13.

A careful review of this emergency rule indicates that although deference must be given to the expansive language of the statute as conceived by the legislature, the rule as written exceeds the mandate of the statute. Additionally the rule will in all probability create a paper avalanche of substantial magnitude which will result in an unnecessary burden - both upon those required to submit information to the Authority as well as a paper chase for the Agency itself. Finally, a series of penalties exist which may be levied within the discretion of the Board for non-compliance. But the language contained in portions of the rule (albeit, at times, directly from that statute) fails to provide clear guidance in terms of what information is required by the agency.

For all of the above reasons, it is respectfully suggested that the Authority amend the rule to narrow the focus of reporting requirements, clarify certain ambiguous language, particularly at

sections 4.16 and 4.17, increase the scope of its exemptions and modify the exemption process and decrease, in certain instances, the scope of documents initially required from health care providers and related organizations while retaining the right to require additional documentation in appropriate instances.

The following elaboration of the above general points of consideration should adequately demonstrate to the Board that informational paper blizzards can be avoided while fulfilling the legislative intent of the statutes involved.

I. The Definition of Related Organizations Cannot be Literally Construed

The legislative finding, purpose and intent of the Health Care Financial Disclosure Act, found at 16-5F-1 (1 of Seq.) are readily discernable. As the Authority is aware, in modifying and reenacting this article, the legislature again voiced its concern relating to the costs of health care and the availability of health care services to its citizens. To this end, the legislature determined that the purpose of financial disclosure of health care facilities and related organizations shall be to "make a public disclosure of their financial position [and] to bring about a review as to the reasonableness of the costs of health care services (16-5F-1 following (5)). There is, therefore, a relationship between a related organization and the requirement for financial reporting. That nexus is the ability of the related organization to directly affect or influence hospital costs.

This focus upon certain but not all related organizations is

WWHA

further refined in the same statute of 16-5F-3 (general powers and duties of the Board regarding reporting and review) at section (a) (2):

"require the filing of fiscal information by . . . related organizations relating to any matter affecting the cost of health care services in this state". (Emphasis mine).

Thus, it is clear that not all related organizations should be required to divulge the financial reporting requirements listed in the rule. It is only those organizations which have a direct influence on health care costs of the covered facility which should be subject to financial reporting.

II. The Exception Process is Unworkable

The Authority itself recognizes that the related organization reporting is selective and not universal by the creation of an exception to the reporting requirements at section 4.4. This exemption section, as written, will in all probability not provide the common sense relief that the Agency may have intended.

Example: A hospital trustee is a union member of the United Steel Workers Union and is a consumer representative, appointed to the hospital board in accord with the state mandated consumer majority statute at 16-5B-6a of the West Virginia Code. As a board member, she actively advises the covered facility on a variety of matters which she believes is important and fully participates in board affairs. She has provided a service to the hospital and therefore

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would not be eligible for an exemption under section 4. Thus, the United Steel Workers Union would have to turn over to the Authority all of the information required by the rule.

Although the financial disclosure statute and the Health Care Cost Review Authority annual financial reporting requirement (16-29B-18) are broadly written, it is doubtful that the legislature intended the results indicated above. Even if this example is deemed to be non-applicable or erroneous, a slight change in the factual situation should suffice. A group of hospital employees petition for a union election. The employees vote union, naming the United Steel Workers as their bargaining agent. Subsequently, a contract is signed. As part of the contract, the hospital agrees to a dues checkoff. Accordingly, the hospital pays the union employee dues deducted from each paycheck. Additionally, the employees, by working for the hospital, provide a "service" to the hospital, and receive money. The rule as presently written requires the union as a related organization to comply with the reporting requirements. It is obvious that the union cannot possibly qualify for an exemption under section 4 as it is currently written.

Example: The Episcopal Bishop of West Virginia is a board member of Ajax Hospital. He donates, through the Episcopal Diocese, \$1,000 to the hospital for charity care of an indigent parishioner. The Diocese of West Virginia is now a related organization subject to all reporting requirements. It is doubtful that the result is consistent with the intent of the legislature.

WVHA

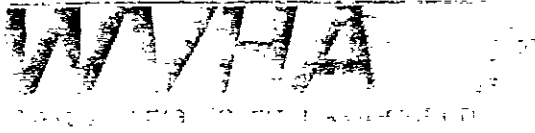
III. The Rule as Drafted Contains Sections Which Should Be Clarified

The term "common membership" at section 2.6 may be problematic. Assume there are two union members on a hospital board of trustees. One trustee belongs to the United Mine Workers of America. The second board member belongs to the United Food and Commercial Workers. Both unions and presumably both board members belong to the AFL-CIO. The AFL-CIO under section 2.6 has just become a related organization.

Reporting requirements at 4.17 should be clarified, particularly as they relate to banks and other financial institutions. It is doubtful that the meaning of section 4.17 can be ascertained. A plain reading of the section and article itself does not shed light on the requirement. If the Agency intends to levy fines and other punishment as contained in section 11 for lack of compliance, it should insure that the regulatory requirements as enunciated in the rule are understandable.

As previously noted, only those related organizations which have a direct influence on health care costs should be required to report to the Agency.

That influence should be substantial. Entities which have only casual relationships with hospitals should not be required to meet the requirements of an annual disclosure report; instead, these entities should be exempted by the Agency. The present rule approaches the reporting requirement from exactly the opposite position: any factor



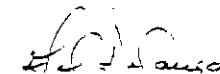
influencing health care costs (e.g., Episcopal Bishop example) is reportable.

The Agency should develop criteria or factors which measure significant, direct and substantial influence on hospitals and health care costs from related organizations. It should then apply these screening factors to related organizations. Only those related organizations which fall within the screening criteria should be required to report. This would result in less, but more relevant reporting.

The exemption process should be conceptually revised to provide for workable exemptions. Particularly, the criteria at 4.4.2, 4.4.3 and 4.4.4 should be changed to reflect significant financial impact, and not casual relationships.

The West Virginia Hospital Association wishes to thank you for the opportunity to comment on this matter.

Respectfully yours,


Gil DeLaura

Vice President/General Counsel

GD/pdp

STEPTOE & JOHNSON

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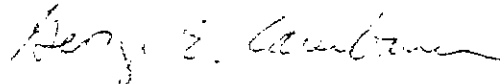
Honorable Larry C. Fizer
Chair
West Virginia Health Care Cost Review Authority
100 Dee Drive
Charleston, West Virginia 25311

Dear Chairman Fizer:

Please enter the attached comments into the record concerning the new financial disclosure rule, Series 13, Title 65, on behalf of our client, the West Virginia Health Care Association.

Thank you.

Sincerely,



George E. Carenbauer

GEC/ey

Enclosure

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THE BRYAN CENTRE
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FACSIMILE (301) 739-3948

My name is George Carenbauer. I am an attorney with Steptoe and Johnson, and we represent the West Virginia Health Care Association, on whose behalf these comments are made.

As currently drafted, the rules appear to require organizations which are only remotely connected to health care facilities to submit financial statements, if a person connected to the organization sits on the board of a health care facility. For example, the rules appear to require that a newspaper company that provides a subscription to a nursing home would have to submit a financial statement to HCCRA if a person who sits on the board of directors of the newspaper is also on the board of the nursing home, even though the subscription to the nursing home is an insignificant portion of the newspaper's business.

This absurd result appears to obtain from the rules as drafted because of the following:

- "Common" membership among boards, governing bodies, etc. is undefined in Section 2.6, but we understand this is being interpreted to mean that one member in common between the boards of a health care facility and a "related organization" is all that is necessary to meet this requirement.

- The definition of "related organization" as provided in the West Virginia Code has not been limited by the rules to restrict it to truly "related" organizations. Instead, Section 2.6 restates the definition of "related organization" in the statute, and then broadens it to "also" mean other things.

- Section 4.4 provides an exemption only for a "related organization" that provides or receives no money or services to or from the covered facility, so that in the example cited earlier, the fact that the publishing company sold one newspaper subscription to the nursing home would prohibit the publishing company from obtaining an exemption.

- Under Section 4.4, even the second organization that provides or receives no money or services to or from the covered facility would have to file for an exemption. So, for example, when a member of the board of directors of a publishing company serves also as a member of the board of directors of a nursing home, the publishing company would have to file for an exemption, even if the nursing home did not subscribe to the publishing company's newspaper.

The West Virginia Health Care Association has surveyed just a few nursing homes and fears that the rule as currently drafted would drastically affect members of their boards of directors. For example, one home has a 22-member board of directors that includes various community leaders, including an officer of a bank, an insurance agent, an attorney and a community activist -- the sort of people who serve on the boards of several other organizations. Under the current rules, all these other organizations are required, at a minimum, to file for an exemption from financial disclosure with HCCRA; and if any of these other organizations provide or receive any money or services to or from the nursing home -- however inconsequential -- they must submit the detailed financial reports required under the rule. Obviously if the rule is left unchanged, many members of nursing home boards of directors would feel compelled to resign from the board of either the nursing home or the other organizations, lest they subject the other organizations to the financial disclosure requirements of HCCRA.

Because the rule has been issued not only as a prospective legislative rule, but also as an emergency rule currently in effect, we recommend that the emergency rule be amended immediately to prevent the potential for mass resignations from the boards of health care facilities or numerous other businesses and associations in the state.

We do not believe that the Legislature intended the over-reaching effect of the rules when it added financial disclosure for "related organizations", and, in fact, the Health Care Cost Review Authority may not have intended such a result when it issued these rules. Even if HCCRA does not intend to apply the rules so severely, the language of the rules should be clarified, so that people know what is required of them under the law.

Therefore, we suggest the following changes to the rules to limit their scope to truly "related" organizations, and to give clearer notice to the public:

- Refine the definition of "related organization" so as to comport with the apparent legislative objective of requiring financial disclosure by organizations that have a symbiotic relationship with a health care facility
 - Define "common" membership among boards, governing bodies, etc. to reflect the element of mutual control of the covered facility and the related organization by the same parties
 - Define "related corporations", "joint ventures" and "similar organizations" to give clear notice as to what is meant by these terms
-

- Define under what circumstances, if any, an individual can qualify as a related “organization”

- Provide that an incidental connection between a covered facility and an organization will not subject the organization to the disclosure requirements, or even to filing for an exemption.

We appreciate the opportunity to present these remarks, and thank the Authority for its cooperation.

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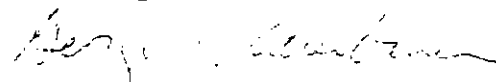
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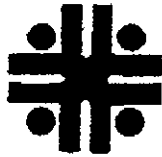
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We appreciate the opportunity to present these remarks, and thank the Authority for its cooperation.



CABELL HUNTINGTON HOSPITAL

July 18, 1991

Mr. Larry Fizer, Chairman
West Virginia Health Care Cost Review Authority
State Capitol Building
100 Dee Drive
Charleston, West Virginia 25311

Dear Mr. Fizer:

The following comments are made re: the proposed
Financial Disclosure Rule:

Par. 3.1 &
4.1

It should be recognized that an 'audited' financial report requires a substantial amount of work by an independent certified public accountant. The cost of such an audit on the 'consolidated' financial statements of the covered facility and related organization is substantial, but a reasonable expenditure. Having an audit of the financial statements of each related entity would increase the cost of an audit in multiples approaching the number of related entities. In order to avoid unnecessary costs of audits for individual related organizations, the covered facility should be given the option of providing individual or consolidated reports.

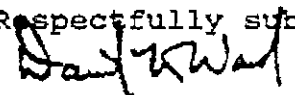
Par. 4.1 &
4.1.7

The threshold for reporting expenditures should be adjusted to \$100,000 and adjusted annually for inflation. The \$55,000 threshold in the old law has not been adjusted for inflation for quite a number of years. Reporting expenditures at such a small threshold is unnecessarily burdensome and costly.

Par. 4.1.11

The contracts requested are proprietary in nature and should be held confidential. Many contracts for such services do not require that we pay for such services but rather that the physicians or other providers bill for those services. Hospitals do not have access to these charges.

Respectfully submitted


David M. 'Monte' Ward
Sr. Vice President/CFO



**Shenandoah
Community
Health Center**
of Intercounty Health, Inc.

P.O. Box 3236 Martinsburg, WV 25401

304-263-4956

July 16, 1991

Mr. Larry Fizer, Chairman
Health Care Cost Review Authority
100 Dee Drive
Charleston, West Virginia 25311

Dear Mr. Fizer:

RE: Financial Disclosure Rule

I have reviewed the Financial Disclosure Rule as promulgated (65-13-1 through 65-13-11). When assessing the impact of this rule on our organization I noticed several disturbing points.

Community Health Centers by nature lead a very precarious existence. Communities set high expectations on their ability to provide medical services because there are few alternatives for the patients we serve. Federal and State funds available to CHC's were never plentiful and are becoming scarce as the economy contracts. As a result, CHC's have become resourceful in preserving the dollars available to them. Anything that negatively affects their operations can jeopardize the health center's existence.

65-13-4.1.7 requires that covered organizations publish the salaries of all employees earning in excess of \$55,000. I fail to understand how such information would be relevant to HCCRA's deliberations. For Community Health Centers, this list will be basically a list of the Center's physicians. CHC's typically pay their physicians less than what they would receive in private practice. With the scarcity of providers in most areas of West Virginia this data will become a feeding ground for medical practices and institutions wishing to expand their staffs. Centers for the most part will not be able to compete with these organizations.


65-13-5 (all sections). As I interpret this rule, the Board, at their discretion, may require a covered organization to produce every document, file, personal note, etc., that relates to the operations of the business within ten days.

Mr. Larry Fizer, Chairman
July 16, 1991
Page Two

This information with the exception of those items excluded under Section 65-13-8 are now available for public inspection. Opening up to the public sensitive information (personnel files, contract terms, etc.) can place the Center's existence in jeopardy. These disclosures can also present the Center and HCCRA with serious liability issues. I understand HCCRA rarely imposes this section, but the financial disclosure rule as promulgated provides no safeguards for a covered organization as to when this information can be required or to its confidentiality once its been obtained.

I understand the need for HCCRA to have the ability to obtain sensitive data in the course of their reviews. However, I feel more thought needs to be given to the impact on the covered organizations and the disclosure rules need to be modified accordingly.

Sincerely,


Edward C. Douglas
Director Of Finance

/j

cc: Jill Hutchinson

BEFORE THE WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
HEALTH CARE COST REVIEW AUTHORITY

IN RE: ~~FINANCIAL DISCLOSURE RULE~~
~~CERTIFICATE OF NEED RULE~~
W. Va. C.S.R. §65-7-1

COMMENTS OF THE MONONGAHELA VALLEY ASSOCIATION
OF HEALTH CENTERS, INC.

These comments are filed on behalf of the Monongahela Valley Association of Health Centers (MVA), a West Virginia non-profit corporation, providing primary care and home health services through the Fairmont Clinic, Shinnston Clinic and MVA Home Health Service.

The MVA has several concerns about the proposed regulations and accordingly opposes the adoption of the same. These points in opposition can be summarized as follows:

1. The Expense to health care providers of complying with the proposed regulations is excessive.
2. The proposed regulations exceed the legislative grant of both power and authority to the Health Care Cost Review Authority (HCCRA) and are accordingly illegal.
3. The proposed regulations are anti-competitive in effect, will ultimately increase the cost of medical services, and will increase the difficulty experienced by health care facilities in maintaining qualified physician employees.
4. The proposed regulations deny the covered facilities and related organizations of rights under *West Virginia Code* §29A-1-1, *et seq.*, the "Administrative Procedures Act" (APA).
5. Facilities and organizations which do not maintain a place of business in West Virginia, yet render services here are not required to

publish the Annual Public Disclosure Report and are accordingly granted an advantage over facilities and related organizations with a place of business within the state.

6. Because the proposed regulations do not equally apply to all health care facilities and physicians, the regulations are in violation of the equal protection clauses of the state and federal constitutions.

I.

THE EXPENSE TO HEALTH CARE PROVIDERS OF COMPLYING WITH THE PROPOSED REGULATIONS IS EXCESSIVE.

The cost of the preparation and publication of the "Annual Public Disclosure Report" and the other documents required is estimated to be between \$60,000 and \$100,000. A certified audit, for a medium sized facility begins at approximately \$20,000, and not all facilities are required to have certified audits performed on an annual basis. The remainder of this expense would be incurred primarily because information is required which is not normally maintained or generated by or on behalf of the facilities.

Additionally, the proposed regulations are vague concerning the area of publication of the required report. The area of publication specified is "the county where the covered facility or related organization is located." (§65-3-3.) However, in situations wherein the facility or related organization has branches or offices in more than one county, it appears that the report must be published in all such counties.

II.

THE PROPOSED REGULATIONS EXCEED THE LEGISLATIVE GRANT OF BOTH POWER AND AUTHORITY TO THE HEALTH CARE COST REVIEW AUTHORITY (HCCRA) AND ARE ACCORDINGLY ILLEGAL.

West Virginia Code §16-5F-1 provides, in relevant part:

It is the purpose of this article to provide that the facilities and organizations covered herein shall make a public disclosure of their financial position and to bring about a review as to the reasonableness of the costs of health care services.

To effectuate this purpose, HCCRA is empowered by §16-5F-3(a) to do certain things:

- (1) Promulgate rules and regulations
- (2) Require the filing of fiscal information by covered facilities and related organizations relating to any matter affecting the cost of health care services in this state.
- (3) Exercise, subject to the limitations and restrictions herein imposed, all other powers which are reasonably necessary or essential to carry out the expressed purposes of (article 5F).

With regard to the "filing of fiscal information," the legislature, in §16-5F-4 required the filing of (a) the Annual Public Disclosure Report described in C.S.R. §65-3-3; and (b) more general documents described as:

- (1) A statement of services available and services rendered;
- (2) A statement of the total financial needs . . . and the resources available or expected to become available to meet such needs;
- (3) A complete schedule of . . . then current rates with costs allocated to each category of costs . . . ;
- (4) A copy of such *reports* made or filed with the federal health care financing administration . . . ;
- (5) A statement of all charges, fees or salaries for goods or services rendered to the covered facility or related organization for the period reported which shall exceed in total the sum of fifty-five thousand dollars and a statement of all charges, fees or other sums collected . . . which shall exceed in total the sum of fifty-five thousand dollars during the period reported;
- (6) Such other *reports* of the costs incurred in rendering services as the board may prescribe . . . ;
- (7) A copy of all tax returns

(Emphasis added.)

It is of importance to note that the word "reports" contained in §16-5F-4(b)(4) and (6) is not defined in *West Virginia Code* §16-5F-1 *et seq.* Rather,

Section 16-5F-2. "Definitions." states:

(6) "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*. (Emphasis added.)

Thus, while HCCRA is empowered to obtain "reports" as it desires, it does not have blanket authority or power to require the filing of the broad range of documents specified in the proposed regulations. Such items as "a complete audited financial report", and "any other statement as required by generally accepted accounting principles" (§65-3-4-4.1.1), are not within HCCRA's authority to require.

III.

THE PROPOSED REGULATIONS ARE ANTI-COMPETITIVE IN EFFECT, WILL ULTIMATELY INCREASE THE COST OF MEDICAL SERVICES, AND WILL INCREASE THE DIFFICULTY EXPERIENCED BY HEALTH CARE FACILITIES IN MAINTAINING QUALIFIED PHYSICIAN EMPLOYEES.

MVA believes that the disclosure of financial information as required by the proposed regulations, and the availability of the same for inspection by anyone with the sophistication to ask for it will serve no purpose other than to allow other, perhaps out-of-state facilities to take advantage of the reporting facility's economic position by the hiring (or "raiding") of professional employees.

West Virginia is recognized as a medically under-served area. As a result, many areas cannot attract the services of ANY physicians, and some areas have a great deal of difficulty in attracting the services of enough qualified physicians. To permit "public" access to sensitive, otherwise proprietary financial information is to provide competitors with all of the tools (weapons) necessary to make the provision of competent medical services

impossible.

IV.

THE PROPOSED REGULATIONS DENY THE COVERED FACILITIES AND RELATED ORGANIZATIONS OF RIGHTS UNDER *WEST VIRGINIA CODE* §29A-1-1, *et seq.*, THE "ADMINISTRATIVE PROCEDURES ACT."

West Virginia Code §16-5F-4 provides, in part:

Whenever further information is deemed necessary to verify the accuracy of any information set forth in any statement, schedule or report filed . . . the board shall have the authority to require the production of any records necessary to verify such information.

It is only on occasions when HCCRA determines that verification of the accuracy of filed information is necessary that it has the statutory authority to require the submission of material in addition to the reports specified by the legislature.

However, the proposed regulations, by requiring the filing of contracts and the preparation of reports other than those identified by the legislature deprive the facilities and related organizations of their administrative right to protest HCCRA's actions in the form of an APA contested case.

Rather, the facility or related organization will either become a respondent in an injunction lawsuit, or under some circumstances a defendant in a criminal proceeding.

V.

FACILITIES AND ORGANIZATIONS WHICH DO NOT MAINTAIN A PLACE OF BUSINESS IN WEST VIRGINIA, YET RENDER SERVICES HERE ARE NOT REQUIRED TO PUBLISH THE ANNUAL PUBLIC DISCLOSURE REPORT AND ARE ACCORDINGLY GRANTED AN ADVANTAGE OVER FACILITIES AND RELATED ORGANIZATIONS WITH A PLACE OF BUSINESS WITHIN THE STATE.

The proposed regulation provide, in W. Va. C.S.R §65-3-3.1, that "[t]he

publication (of the Annual Public Disclosure Report) . . . shall be placed in a qualified newspaper published in the county where the covered facility or related organization *is located.*" (Emphasis added.) If a facility or organization is located outside of West Virginia, but renders services within the state, there is no requirement of publication. Similarly, if a covered facility or organization is located within the state, but is owned or controlled by a "foreign" entity, information concerning the in-state facility or organization can be hidden or obscured by virtue of the foreign relationship. For example, services and materials could be provided by the out-of-state entity at no charge to the West Virginia entity, but billed to West Virginia residents, or their third party payors, without any duty to report the same to HCCRA.

VI.

BECAUSE THE PROPOSED REGULATIONS DO NOT EQUALLY APPLY TO ALL HEALTH CARE FACILITIES AND PHYSICIANS, THE REGULATIONS ARE IN VIOLATION OF THE EQUAL PROTECTION CLAUSES OF THE STATE AND FEDERAL CONSTITUTIONS.

Representatives of HCCRA have stated that HCCRA intends to adopt the definition of "Ambulatory health care facility" set forth in *West Virginia Code* §16-2D-2.¹

Outpatient primary care facilities are, in many respects in direct competition with private office practitioners. Traditionally, the primary advantage of such facilities has been the ability to offer a broader range of

1. *West Virginia Code* §16-2D-2(b) provides: "Ambulatory health care facility" means a facility which is free-standing and not physically attached to a health care facility and which provides health care to noninstitutionalized and nonhomebound persons on an outpatient basis. *This definition does not include the private office practice of any one or more health professionals licensed to practice in this state pursuant to chapter thirty of (the) code. . .* (Emphasis added.)

services at costs competitive with the private practitioner.

The proposed regulations, and the statutory interpretation apparently to be made concerning them will place the outpatient clinic covered facility or related organization at a particular disadvantage since they are required to file extensive reports, available to the public, while the private practitioner does not. A close reading of the statutes and proposed regulations seem to exclude even large private practices in which many physicians are associated.

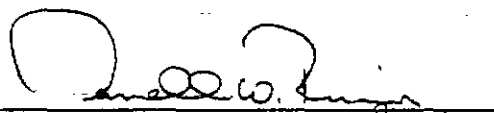
A law or regulation which applies to one entity and not another, under similar circumstances appears to violate the equal protection provisions of the United States and West Virginia Constitutions.

CONCLUSION

For the reasons above set forth, the Monongahela Valley Association of Health Centers, Inc., recommends that the regulations proposed herein be rejected, and that additional comments be solicited with the intent of formulating a regulatory system consistent with the intent of the legislature.

Respectfully submitted,

Monongahela Valley Association of
Health Centers, Inc.
By counsel.



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July 18, 1991

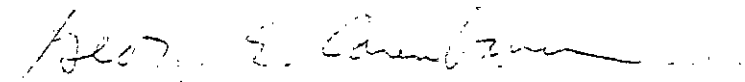
Honorable Larry C. Fizer
Chair
West Virginia Health Care Cost Review Authority
100 Dee Drive
Charleston, West Virginia 25311

Dear Chairman Fizer:

Please enter the attached comments into the record concerning the new financial disclosure rule, Series 13, Title 65, on behalf of our clients, the Southern Hills Rehabilitation Hospital and the Western Hills Regional Hospital.

Thank you.

Sincerely,


George E. Carenbauer

GEC/ey

Enclosure

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These comments are submitted on behalf of Southern Hill Rehabilitation Hospital in Princeton and Western Hills Regional Hospital in Parkersburg.

We believe that the rules should make it clear that minority investors in health care facilities or related organizations will not have to submit their personal portfolios to HCCRA.

Section 3.5.4 of the rules as drafted requires covered facilities and related organizations to submit a statement of ownership for persons owning more than five percent (5%) of the capital stock outstanding and the dividends paid thereon (except for certain publicly traded corporations). Although we believe that there is no overt provision in the rules that would require these stockholders to submit a personal financial disclosure statement, we are concerned that this provision of Section 3.5.4, in conjunction with new language in the rules concerning "related organizations", could be interpreted so as to require the individual stockholders to submit such statements.

Therefore, we believe that a clarification is necessary, and suggest the following language be added at the end of Section 3.5.4: "Nothing in these rules shall be construed to require an individual investor with a minority interest in a health care facility or related organization to submit a personal financial statement."

If the rules are not amended to remove the potential liability of such individual investors to submit personal financial statements to HCCRA (which under recent revisions to the law would

also mean submitting copies of their personal federal and state income tax returns), investment in health care facilities would surely suffer, as individuals would not tolerate the potential for such a gross invasion of their privacy.

**WV HEALTH CARE COST REVIEW AUTHORITY
MEETING REGISTRATION**

Date of Meeting: Thursday, July 18, 1991, 10:00 am

Public Hearing re: Financial Disclosure Rule

	Individual's Name:	Name of Organization:	Do you wish to speak? Y or N
1	Pat White		Yes
2	George Rader	WV SMD	Yes
3	DARRELL BINGER	MONONGAHELA VALLEY ASSN	N
4	JIM ROSS	MVA	present ^{with} _{stall}
5	Mike Smith	Eyes & Ears	N
6	Bob Schreiner	Handwritten Internal Medicine	X
7	GEORGE CARENBAUER	WV HEALTH CARE ASSN	Yes
8	Michael P. Chaney	Key, Costs, Chaney, Love & Wise	No IF needed
9	Steve Banelmoss	APMA + Foster CPA's	Yes
10	Bill McKee	APMA + Foster CPA's	No
11	WILL HUTCHINSON	WV Assoc of Comm Hlth & Hlth Care	Yes
12	Robert Hill	Handwritten	Yes
13	Bob Barnette	WV Council for Health Care Reform	Yes
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Gaston Caperton
Governor

Tanja Willis Miller
Secretary

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
HEALTH CARE COST REVIEW AUTHORITY

Larry C. Fizer
Chairman

Board Members
Walter J. Dale
Robert F. Hatfield

M E M O R A N D U M

TO: Legislative Rule-Making Review Committee

FROM: Health Care Cost Review Authority

DATE: August 9, 1991

RE: Brief Summary of Proposed Legislative
Rule: Financial Disclosure Rule; and
Statement of Circumstances Requiring
the Rule

=====
This rule implements the provisions of the Health Care Facility Financial Disclosure Act found at W. Va. 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," 65 C.S.R. 13 (1989).

Enrolled Committee Substitute for H. B. 2194, effective March 20, 1991, significantly expanded the agency's jurisdiction regarding the collection of financial information to include other health care facilities and other related organizations. Previously, the agency collected data from hospitals and nursing homes.

This rule contains the reporting requirements for all covered entities and their related organizations. Information required to be filed pursuant to this rule includes a balance sheet, statement of income, statement of changes and retained earnings, statement of ownership, a statement of services available and services rendered, approved budget, schedule of rates, cost reports, statement of charges, fees or salaries for services rendered to the entity in excess of \$55,000.00, a statement of charges or fees collected in excess of \$55,000.00, and income tax returns.

MKS/jmh



Gaston Caperton
Governor

Larry C. Fizer
Chairman

Tanja Willis Miller
Secretary

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
HEALTH CARE COST REVIEW AUTHORITY

Board Members
Walter J. Dale
Robert F. Hatfield

M E M O R A N D U M

TO: Legislative Rule-Making Review Committee

FROM: Health Care Cost Review Authority

DATE: August 9, 1991

RE: Amendments and Reasons for Amendments to
Proposed Legislative Rule: Financial
Disclosure Rule; and Statement of
Circumstances Requiring the Rule

=====

Various comments both written and oral were received by the agency from health care providers and other interested persons. Many of the comments received by the agency were duplicative of one another, therefore, for simplicity's sake the comments will be summarized by subject matter.

Many comments were received concerning the applicability of this rule to certain health care providers and/or facilities. Jill Hutchinson, Executive Director of the West Virginia Association of Community Health Centers, Senator Oshel Craigo, Delegate Pat White and other primary care clinics objected to the inclusion of primary care clinics within the scope of this rule. H. B. 2194 amended the definition of a "covered facility" to include ambulatory health care facilities. Primary care clinics are considered ambulatory health care facilities and meet the definition contained at W. Va. Code, §16-2D-2. Furthermore, the development of a primary care clinic is subject to certificate of need review as the development of an ambulatory health care facility. Accordingly, due to the inclusion of the language "ambulatory health care facility" within the definition of "covered facility" for purposes of financial disclosure, the agency cannot exempt primary care clinics from the financial disclosure requirements.

A second group of health care providers, i.e., physicians, commented through Charles Holland, the administrator of Southern West Virginia Clinic and George Rider, Executive Director of the West Virginia State Medical Association, that the definition of a

Memorandum to Legislative Rule-Making Review Committee
August 9, 1991
Page Two

covered facility should exclude the private practice of medicine as required by W. Va. Code, §16-2D-4. Accordingly, the agency has amended the definition of covered facility found at subsection 2.4 of the rule to state the private office practice of one or more health professionals is not considered a "covered facility" unless the practice is certified pursuant to certificate of need law as an ambulatory surgical facility or center.

Finally, comments were received from Wheeling Health Right, Inc., and Grafton-Taylor County Health Department regarding the applicability of this rule to their facilities. The agency notes the rule at subsection 2.4 specifically excludes county health departments and free clinics that provide all of their services without cost to the patient from the provisions of this rule.

A second area of concern was the definition of "related organizations" found at subsection 2.6 of the rule and the exemption language found at section 5 of the rule. Comments were received from the West Virginia Hospital Association (WVHA) and the West Virginia Health Care Association (WVHCA) concerning this. Specifically, these entities objected to the language regarding common membership found at subsection 2.6 of the rule and requested clarification of the definition of a "related organization" and those entities eligible for an exemption. The common membership language found at subsection 2.6 of the rule is statutory and, accordingly, the agency did not alter this portion of the definition. However, the agency did amend the language in subsection 2.6 and section 5 of the rule concerning "related organizations" and exemptions to clarify and refine the language in these sections of the rule. The agency narrowed the scope of the rule to exclude organizations which have a merely casual relationship with the covered facility.

Many comments were received from different entities who objected to the expense of reporting this financial information, the requirement to file expenditures over \$55,000.00, and the necessity to file copies of contracts with the agency. Cabell Huntington Hospital, Shenandoah Community Health Center, Monongahela Valley Association of Health Centers, Inc., and Northern Greenbrier Health Clinic, Inc., filed comments objecting to all or some of these requirements. W. Va. Code, §16-5F-4, clearly requires the filing of the information to which these entities object. Accordingly, the agency cannot alter the content of the information required to be filed. In regard to the expense of reporting, the agency notes the comments of Northern Greenbrier Health Clinic, Inc., in which it states this rule duplicates the disclosure process currently in effect for non-profit health clinics. If this information is already required to be filed with

Memorandum to Legislative Rule-Making Review Committee
August 9, 1991
Page Three

the federal government, then the cost of duplicating such a report and filing it with the agency should not be too extensive. Furthermore, the agency intends to develop a short form pursuant to section 7 of the rule upon which primary care clinics, among others, may report.

Monongahela Valley Association of Health Centers, Inc., (MVA) further objects to the rule for various reasons which basically constitute an attack upon the Financial Disclosure Act, W. Va. Code, §16-5F-1 et seq., rather than the rule itself. MVA complains that the rule regulates health care facilities and not physicians. Except under certain specified instances as defined in W. Va. Code, §16-2D-1 et seq., physicians are generally exempt from certificate of need law and accordingly, are not contained within the definition of a "covered facility" for purposes of this rule. MVA further suggests the agency should regulate out-of-state providers. Obviously the agency has no authority to collect financial disclosure information from out-of-state providers. MVA's other comments relate to provisions of the rule and the statute which remained unchanged from the prior legislation and prior financial disclosure rule. These areas were previously reviewed and approved by the Legislature in the "Financial Disclosure Rule," 65 C. S. R. 13 (1989).

Finally, two rehabilitation hospitals, Southern Hills Rehabilitation Hospital and Western Hills Regional Hospital, filed a written comment suggesting clarification concerning minority ownership interest by individuals. Accordingly, the agency has amended subsection 3.5.4 of the rule to define a minority interest in a health care facility or related organization.

MKS/jmh

ORIGINAL

BEFORE THE HEALTH CARE COST REVIEW AUTHORITY

IN RE:

TITLE 65
WEST VIRGINIA LEGISLATIVE RULE
SERIES 13
FINANCIAL DISCLOSURE RULE
PUBLIC HEARING

The following is a transcript of proceedings had before the Health Care Cost Review Authority, 100 Dee Drive, Charleston, Kanawha County, West Virginia, on July 18, 1991, commencing at 10:02 a.m., before Anita K. Urban, Court Reporter and Notary Public in and for the State of West Virginia, pursuant to Notice.

APPEARANCES: LARRY FIZER, Chairman/Hearing Examiner
MARIANNE STONESTREET General Counsel
ROBERT PARKER, Executive Director
WALTER DALE, Board Member
ROBERT HATFIELD, Board Member
RAY SHINGLER, Chief Financial Analyst
DANA DAVIS, Assistant Counsel

PHYLLIS HAYNES EDENS

CERTIFIED COURT REPORTERS
2155 KAY NEVA LANE
CHARLESTON, WEST VIRGINIA 25312
(304) 984-3531 WV (800) 248-3531

EXAMINER FIZER: Come to order, please.

The purpose of the hearing this morning is to take the public comments upon the proposed Legislative Rule, Title No. 65, Series No. 13, related to the Financial Disclosure Act that is within the jurisdiction of the Health Care Cost Review Authority.

I'll start out just with a brief introduction of the people that are in attendance at this table this morning.

I am Larry Fizer, the Chairman of the Health Care Cost Review Authority.

To my immediate right is Robert Hatfield, Board member of the Authority.

To my immediate left, Walter Dale, Board member of the Authority. To his left is Ray Shingler, the Chief Financial Analyst for the Agency.

Marianne Stonestreet, who is the General Counsel. Dana Davis, who assisted us in drafting the regulations that are before us today. Beside of Mr. Davis is Robert Parker, the Executive Director for the

Agency.

Welcome, Senator.

With that, I'll take the list as people have signed in to make comments today.

Delegate White?

(WHEREUPON, no response was made.)

EXAMINER FIZER: Okay, let's go on to the second one.

George Rider? I would ask that you identify yourself very clearly for the record this morning.

MR. RIDER: Good morning. I am George Rider, Executive Director of the West Virginia State Medical Association. I appear before the Board today at the direction of Dr. Michael M. Stump, President, on behalf of the State Medical Association and its physician members who practice medicine in the State of West Virginia.

The State Medical Association has received indications that the proposed Financial

Disclosure Rule may be interpreted and used in a manner that will subject physicians in private practice in this state to the financial reporting requirements.

We fervently hope that these indications are not correct. To apply the financial reporting requirements to the private physician practices would be contrary to the state's statutory scheme, and would violate the constitutional rights and privileges of physicians engaged in the private practice of medicine in West Virginia.

Furthermore, in our opinion, a primary effect of the application of financial reporting requirements to private medical practices would be to impose an additional reason for physicians to move away from West Virginia, thereby exacerbating the existing problem of health care availability throughout the state.

The suggestions that the proposed rule may be interpreted to apply to private medical practices apparently arises from the fact that the term

covered facility is defined as including ambulatory health care facility and ambulatory surgical facility, neither of which terms are defined in the proposed Rules.

Therefore, it has been suggested, the proposed Rule may be interpreted to include private medical practices by applying the broadest possible definitions to the terms ambulatory health care facility and ambulatory surgical facility.

However, although these terms are not defined in Article 5F, the Health Care Facility Financial Disclosure statute, they are defined elsewhere in the West Virginia Code. Specifically, Section 16-2D-2(b) of the West Virginia Code defines ambulatory health care facility as not including the private office practice of any one or more health professionals licensed to practice in this state pursuant to the provisions of Chapter 30 of this Code.

Likewise, Section 16-2D-2(c) defines ambulatory surgical facility as not including the

private office practice of any one or more health professionals licensed to practice surgery in this state pursuant to the provisions of Chapter 30 of this Code.

Although these definitions contain exceptions for the very limited purpose of making private office practices subject to certificate of need requirements, it is clear that the fundamental definition of ambulatory health care facility and ambulatory surgical facility does not include private office practices.

The definitions of these terms contained in Section 16-2D-2 of the West Virginia Code are, to my knowledge, the only definitions of these terms contained anywhere in the West Virginia Code.

Therefore, if the proposed Rules were to be interpreted to include private office practices within the terms ambulatory health care facility and ambulatory surgical facility, such interpretation would be inconsistent with the West Virginia statutory scheme.

The intent of 16-5F of the West Virginia Code is to allow this Commission to determine the reasonableness of costs of health services provided by affected facilities and to establish charges for these facilities. Nowhere in the statutes is such authority granted to this Commission with respect to private physician practices.

If physicians in private practice are required to provide financial data, but the Commission cannot impose any action, then the only purpose for this effort is to harass the physicians in this state.

Furthermore, even if the new statute were to be interpreted to give the Board rate-setting authority over private medical practitioners, then West Virginia would be unique among the 50 states in having such authority. In my opinion, West Virginia would also be unique in having virtually no physicians willing to engage in private practice in this state.

In addition, to subject the men and women who engage in private medical practice in this

state to the financial reporting requirements would violate those individuals constitutional rights of privacy. The constitutional right of privacy is protected and preserved for every citizen of West Virginia by both the State and Federal Constitutions.

As the Board is aware, the financial disclosure requirements provide not only for the reporting of detailed financial information to the Board, but also requires publication of detailed financial information.

To require those who practice medicine in this state to report and publish their personal financial information, would serve no function other than to harass them. Surely, this cannot be the purpose of the legislators or of the Board.

Not only would the application of the financial reporting requirements to private office practices constitute an invasion of privacy, but it would also violate the constitutional right of equal protection of the laws.

To my knowledge, except for a person who holds public office, no individual in this state engaged in private business or private employment is required to report and publish his or her personal financial information.

If the proposed rule is interpreted to apply to physicians' private office practices, it would mean that those physicians would be the only individuals in this state subject to this type of requirement. Certainly, to single out our private practicing physicians for such treatment cannot be considered equal protection under the laws.

Of equal concern is the practical effect of the proposed Rule. In my estimation, application of the financial reporting requirements to private office practices would also be absolutely counterproductive to the ongoing efforts to keep physicians available to all the citizens of this state.

It is already a fact that the average physician in private practice in this state earns

almost 26 percent less than the national average for physicians in private practice. It is already a fact that keeping doctors in this state, much less attracting them to this state, is an ongoing problem.

Compliance with the reporting requirements would subject the men and women engaged in the private practice of medicine in West Virginia to the harassment of having their private financial situations reported and published.

Furthermore, it should be noted that the proposed Rule requires detailed, audited reports. Frankly, I would be surprised if many private medical practices even have the type of reports, particularly audited reports, that the proposed Rule would require.

Thus, compliance with the proposed requirements by private medical practices would impose a significant burden, hardship and additional costs. All of this would simply add additional incentive for physicians to leave this state. Certainly, it would make any physician contemplating locating in West

Virginia to think twice about the matter.

In order to avoid all of these problems, the State Medical Association strongly urges that the proposed rule be amended to include, within its definitions, the definitions of ambulatory health care facility and ambulatory surgical facility contained in West Virginia Code Section 16-2D-2.

Specifically, the proposed Rule should be amended to define those terms to not include the private office practice of any one or more health professionals licensed to practice in this state, pursuant to the provisions of Chapter 30 of this Code.

The amendment of the proposed Rule to include this definition will not only make the proposed Rule consistent with the definition of those terms in the West Virginia Code, but it will serve to clarify the proposed Rule in order to avoid the problems that I have outlined.

I should also note that it has been conveyed to us that the Commission believes that a

physician who serves on the Board of a health facility would be required to submit financial data, because under these Rules his or her private practice would be considered a related organization.

Physicians serve on health facility Boards for primarily two reasons. The first is to represent the interests of the medical staff associated with that particular facility. The second is to provide explanation and education to the lay members of the Board on issues that are of a professional nature.

If the proposed Rule is applied in a manner that subjects a physician in private practice to the financial reporting requirements, merely because he or she happens to serve as one of the members of a health care facility Board, then there will be few, if any, physicians willing to serve and provide the type of input needed by health care facility Boards.

In closing, I must comment that it is easy for those of us who live in or near large metropolitan areas, such as Charleston, to take for

granted the availability of physicians in private practice. We may be inclined to assume that we will always have access to physicians in private practice. I am not certain that such an assumption is warranted. But certainly, such an assumption is even less warranted when one considers the availability of private medical practices in the rural areas of this state.

The problem of attracting and maintaining physicians to provide practices in the rural areas of West Virginia are written about almost weekly in the local newspapers.

If the proposed Rule is interpreted to apply financial disclosure requirements to private office practices in West Virginia, there is no doubt in my mind that it will result in intolerable pressure being placed on private physicians to leave West Virginia, and the affect upon thousands of citizens living in West Virginia can be devastating.

The citizens of this state deserve

better. The men and women who elect to engage in the private practice of medicine in this state deserve better.

Therefore, the West Virginia State Medical Association urges the Board to amend the proposed Financial Disclosure Rule to clarify that covered facilities do not include private office practices.

I want to thank the Board for giving me this opportunity to make these comments, and I'd be happy to respond to any questions.

EXAMINER FIZER: Any questions of Mr. Rider?

(WHEREUPON, no response was made.)

EXAMINER FIZER: Thank you, Mr. Rider.

MR. RIDER: Thank you.

EXAMINER FIZER: Ms. White?

MS. WHITE: Good Morning. I know most of the members on the Commission, and I'm glad to be here today and talk to you a little bit about the House's

prospective on the legislative intent and some of the history behind what happened with this particular piece of legislation and how it came to be.

As the Commission knows, I serve as Chair of the Health Committee. I served as a Chair of a special committee that was formed and appointed by the Speaker and the President last December that looked at the broad spectrum of our health care crisis in West Virginia.

As the Commission will recall, at that time there was a proposal that was brought forth by Blue Cross/Blue Shield that would have seriously, in my estimation, and clearly in the Legislature's estimation, would have destroyed the Health Care Cost Review Authority.

The Legislature and the Governor worked very closely together during the course of the legislative session.

Two issues, in particular, that play an important role as you consider the further action on

these Rules, one of which was the continuation of HCCRA and the intent of the Oversight Committee clearly to include hospitals under the related organizations.

Primarily, that was looked at and had been looked at for a number of years by a committee that Chairman Fizer sits on, which is the Uncompensated Health Care and Medicaid Expenditures Standing Committee of the Legislature, statutorily created committee.

It was viewed at that time, and also by the Oversight Committee, that it was very clear that hospitals had in the past diverted dollars from their base to profit-making entities, and it was the intent of that committee, as well as the House and the Joint Committee that was appointed by the Speaker and the President in December, to include related organizations.

However, when that particular bill went through the House, another aspect came up that was also recommended, and that dealt with certificate of need

and leveling the playing field, if you will, between hospitals and other medical providers.

To that end, we changed the definition in the piece of legislation so that whether the facility was a hospital or an ambulatory care clinic or a nursing home that the thresholds for certificate of need would apply.

Chairman Fizer was directly involved with working with the House in drafting that particular part.

When the Senate amended in the related organizations, unfortunately, and I might say that I did not serve on the Conference Committee that reviewed this bill, unfortunately what happened was that all providers, as we had changed the definition for CON, which there was clear support to do, to level the playing field.

The amendment went into that, you know, section that changed the definition, which, therefore, threw the related organizations into this revised

definition of provider.

As this Commission is fully aware, other aspects that have been dealt with, including the formation of the Health Care Planning Commission, have put a very strong emphasis on primary health care.

There has been a very good consultant, Larry Lewin, that's been hired to work with the Health Care Commission to review and update the state health plan, which this Commission will, of course, be using in its determinations of certificate of need and rate setting.

That particular piece of legislation places very strong emphasis on primary care, recognizing that we have too many acute care beds in West Virginia, all of the things that you know and I know that are driving up the health care costs in West Virginia.

To this end, and giving you some background and knowing that the Legislature has been extremely supportive of this Commission and the work

that you are doing, I would like you to reconsider this Rule, to either wipe it out at this stage or a slightly later stage.

If this does not happen, I will cause to have introduced a piece of legislation that will make it very clear that the intent was clearly for hospitals and their related organizations, and was not to include the other providers that we included in the revised definition.

Thank you for the opportunity to testify before you, and again, I thank you for the work that you are doing in health care and hope that you continue to do the same in the future. Thanks.

EXAMINER FIZER: Thank you.

Next is Mr. Ross on the list. However, Mr. Ross asked, rather than making a public comment, that he submit the written comments on behalf of the proposed Rule before us, and I do have those.

(WHEREUPON, the written comments
were accepted into evidence.)

EXAMINER FIZER: Mr. Schreiber?

MR. SCHREIBER: No comment, sir.

EXAMINER FIZER: Mr. Carenbauer?

MR. CARENBAUER: Good morning. My name is George Carenbauer, I'm an attorney with Steptoe & Johnson, and I'm here on behalf of the West Virginia Health Care Association.

Before I begin, in that capacity, I would like to make some remarks for the Health Care Association, and also provide you a copy of my remarks, and also another client, two rehabilitation hospitals, I would like to introduce into the record simply some written comments that I have with me.

I have copies of my remarks for you, if you care to read them, for the Health Care Association.

(WHEREUPON, the written comments were accepted into evidence.)

MR. CARENBAUER: As you know, the Health Care Association is an association of nursing homes in the state.

In reviewing the Rule as it has been written, we think that it can be read to have a very drastic effect on organizations that are really not at all related to health care facilities.

For example, they appear to require that a newspaper company, for example, a publishing company, that provides a subscription to a nursing home would have to submit a financial statement to HCCRA if that person who sits on the Board of Directors of the newspaper publishing company also sits on the Board of Directors of the nursing home, and the nursing home subscribes the newspapers.

There are other examples. For example, if there is a Joint Board membership, a member who is on the Board of Judges of a nursing home also sat on the Board of a bank and the nursing home had its checking account in the bank, it appears that the bank would have to file financial disclosure.

Now, this result comes from the following, the way the language would be read. First,

in Section 2.6, the common membership among Boards is not defined in the Rules, it is stated in the statute, but we understand that this is being interpreted to mean that one member in common on the Board of Directors of a health care facility and a related organization is enough to meet that definition.

The definition of a related organization that appears in the Code is restated in the draft of Rules, but the Rules do not restrict that definition, instead they expand the definition when it says related organization also means a series of other things.

The exemption section, 4.4, provides an exemption only for a related organization that provides or receives no money or services between the two, the health care facility and the related organization.

So, for example, in the example that I gave you before, the fact that the publishing company sold one newspaper subscription to the nursing home would prohibit the publishing company from obtaining an exemption, because there was an exchange of money

between the nursing home and the newspaper company.

Then under that same section, even the organization that provides or receives no money or services to or from the covered facility would have to file for an exemption, so in the same example that I gave before, there's a member of the Board of Directors of a health care facility also sits on the newspaper, even if the newspaper publishing company did not provide a subscription to the health care facility, the publishing company would have to file for an exemption.

The Health Care Association has surveyed a few nursing homes, and fears that the Rule as currently drafted, would drastically effect members of their Boards of Directors.

For example, one home has a 22-member Board of Directors that includes various community leaders, including an officer of a bank, an insurance agent, an attorney and a community activist, all of whom are the kinds of people who serve on numerous Boards in their community.

Under the current Rules, all these other organizations appear to be required at a minimum to file for an exemption from financial disclosure, or if any of these organizations provide or receive any services or money to or from the nursing home, however inconsequential that is, it appears that they would have to submit the detailed financial reports required under the Rule.

Obviously, if this Rule is interpreted as we believe it would be and is left unchanged, many members of the nursing home Boards of Directors would feel compelled either to resign from the Board of the nursing home, or the other organizations on which they serve. Otherwise, the other organizations would have to submit to financial disclosure with HCCRA.

Because this Rule has been issued not only as a prospective legislative ruling, but also as an emergency Rule currently in effect, we recommend that the emergency Rule be amended as soon as possible to prevent the potential for the mass resignations from

the Boards of health care facilities or numerous other businesses and organizations in the state.

We do not believe that the Legislature intended the kind of result that I just described, the overreaching effect of these Rules when it added financial disclosure for related organizations, and, in fact, we think it's unlikely that the Authority itself intended for such an interpretation when it issued the Rules, but we believe even if HCCRA does not intend to apply the Rules so severely, the language of the Rules should be clarified so that people know what is required of them under the law.

So, therefore, we suggest the following changes to the Rules to limit their scope to those organizations that are truly related to a health care facility and to give clearer notice to the public.

There are not necessarily all the required, you can do it in a variety of ways, but, for example, you could refine the definition of related organization so as to comport with the apparent

legislative objective of requiring financial disclosure by organizations that have a symbiotic relationship with a health care facility.

You can define common membership among Boards, governing bodies and so forth to reflect the element of mutual control of the covered facility and the related organization by the same party.

You can define related corporations, joint ventures and similar organizations, terms that appear in the Rules but are undefined.

You can define under what circumstances, if any, an individual might qualify as a related organization.

You could provide that an incidental connection between a covered facility and an organization will not subject the organization to the disclosure requirements or even to the requirement to file for an exemption.

We appreciate very much the opportunity to present these remarks, and thank you for your

cooperation.

EXAMINER FIZER: Thank you, George. Did you have other comments you wish to submit?

MR. CARENBAUER: Yes, I would like to submit these, too.

(WHEREUPON, the written comments were accepted into evidence.)

EXAMINER FIZER: Let the record also show that Mr. Carenbauer has also submitted on behalf of his clients, the Southern Hills Rehabilitation Hospital and the Western Hills Regional Hospital, written comments on the proposed Rule.

Mr. Chaney, you have it marked, if needed.

MR. CHANEY: I think the remarks I was going to make have been covered by the other individuals.

EXAMINER FIZER: Mr. Barthelmess?

MR. BARTHELMESS: No comment.

EXAMINER FIZER: Ms. Hutchinson?

MS. HUTCHINSON: Mr. Chairman, members of the Board, HCCRA staff, my name is Jill Hutchinson. I'm the Executive Director of the West Virginia Association of Community Health Centers.

Our organization represents 54 primary care delivery sites across West Virginia, the majority of these being in rural areas. Five of these 54 are free clinics that offer services to individuals who have absolutely no coverage at all.

I would like to talk to you today about four different issues. The first one is the definition of ambulatory care as opposed to primary care center.

Let me define primary care center. It's a nonprofit, tax-exempt organization. It serves a population, or geographic area, that is medically underserved. It is community-based; it has a community Board, the majority of those Board members are users of that facility, and they are required to accept patients regardless of those patients' ability to pay for the services.

As you can tell, this is much more specific than the definition of ambulatory care center, and this is not a matter of semantics, gentlemen.

Primary care is defined by State and Federal regulations and administrative language. The term ambulatory care center is not used in the State definition out of the Bureau of Public Health, nor is it used in the Federal register that addresses primary care centers or community health centers, we use those terms interchangeably, but they are not -- they are much more specific in an ambulatory care facility.

This HCCRA legislation moved through the session last year. We watched it. We were lead to believe by certain individuals within the Legislature that ambulatory care facility did not apply to the nonprofit primary care centers in the state, that it was not the legislative intent that it apply to the primary care centers in this state.

After the Rule came out, many of the centers contacted their Legislators, and they were told

in every instance that they were taken by surprise that this Rule meant that financial disclosure was applicable to primary care centers.

On to another point, financial burden. Primary care centers are disproportionate share providers. In other words, they see everyone, as I stated before, regardless of their ability to pay for service. Some centers have as high of 70 percent Medicaid patient load, and that's not much of a revenue-base to operate a facility.

In most instances, they are the only provider of care in the area. In most instances, if they're not the only provider in the area, the only provider of care to indigent.

We suffer from the dumping syndrome. Private physicians and other facilities will send patients who cannot pay, or Medicaid patients to primary care facilities. It becomes obvious that the revenue base is not sufficient to maintain operating expenses.

Thus, the State and the Federal Government have grant programs for which these centers apply. Dollars are not plentiful, certainly. The state has \$2.8 million to provide to 70 primary care centers in the state.

It's well documented that primary care centers is the most efficient way to provide health care. They certainly are very creative and very resourceful when preserving their funds. Some of our centers have not increased their fee schedules to patients, those that can pay, in three years, haven't given raises to staff in five years because they don't have the dollars.

Let me illustrate, very briefly, the deficit that appears to be out in these centers. As I state, there's a \$2.8 million appropriation that comes down to the State Health Department that goes to primary care centers.

This year, there was a \$4.6 million request for deficit funds that came from 55 primary

care delivery sites. That is a documented deficit that is out there.

Financial disclosure puts an additional cost on the primary care centers; audits. There's additional cost to reduce that audit to a publishable form. This has been verified by one of the centers with an auditor, their auditor also does auditing and does the reduction of that information for publication, so additional cost to that center.

The centers that are not Federally funded, some do a biannual audit. This means they will have to do an annual audit, additional costs again.

Now, the costs may not seem much to a large facility, but to a primary care center that is operating on a limited budget, it's extremely telling to them.

The free clinics, which I mentioned there are five, they lack the administrative structure, the budgets, the staff to meet some of the requirements that are asked by the Financial Disclosure Rule.

Another point is the publishing of salaries. Gentlemen, you would be amazed at what our physicians are paid in primary care centers. It takes a special doctor to work there. We cannot offer competitive salaries.

We have a physician shortage, Mr. Rider spoke of it, Delegate White spoke of it. We have a physician shortage in this state. It's well documented, we all know it. We can't compete. It's very difficult to bring doctors into centers that pay very little, that are located in rural areas. Those physicians become a target.

They are published in the paper that they make, I'll use an example, \$55,000, easily lured away by other monies. I'm certainly not saying that all physicians can be lured away, because there are some special folks out there that stay, but they can be lured by money, and don't ever think for a minute that headhunters don't look for this.

I talk to headhunters twice a week.

They look for those physicians out there that are making small dollars to pull them away to another practice. I'm not talking necessarily in the state, but also out of state, so we will lose physicians out of state as well.

The cost of losing a provider in a primary care center is devastating. It can close a center, we have many solo practice sites. It certainly is devastating to the patients that we serve.

The last one I want to touch on is disclosure of additional information. Part of the regulation, and I'm sorry, I did not write down the number, but you all know it well, I'm sure I don't think I have to reiterate those numbers to you, the Board may require an organization covered under this Rule to produce every document filed, personal notes, et cetera, that relates to the operation of the business. I don't think the Board exercises this often, but the option is there.

Opening up to the public sensitive

information, personnel files, contract files, et cetera, can place primary care in jeopardy, can also be litigious, especially in the area of personnel.

There appears to be no safeguard as to when this information can be required or its confidentiality once it's obtained.

We, as a primary care organization, cannot see any useful purpose that is served by requiring financial disclosure for primary care centers, and we are requesting that you reconsider these regulations as they apply to our centers.

Thank you.

EXAMINER FIZER: Others wishing to comment?

MR. DeLAURA: Sir, I have written comments only.

EXAMINER FIZER: Do you wish to submit those on behalf of the Hospital Association?

MR. DeLAURA: On behalf of the Hospital Association, yes.

EXAMINER FIZER: Let the record show that Mr. DeLaura has submitted written comments on behalf of the West Virginia Hospital Association on the proposed Rules that are before us this morning.

(WHEREUPON, the written comments were accepted into evidence.)

MR. HOLLAND: I'm Charles Holland. I'm the Administrator of Southern West Virginia Clinic in Beckley. We're a 20-physician multi-specialty group. Our physicians are in private practice, we're law abiding citizens, we pay all taxes.

Of the groups that have been before you this morning, I did not find anybody, at least to my ear, that required extensive review and control, and I'd like to add one other group in the state, multi-specialty groups.

Multi-specialty groups practice in this state is not as strong as it is in many states. It's usually considered a very positive form of practice.

There's Southern West Virginia Clinic;

there's Huntington Internal Medicine group; Fairmont Clinic; and I would hope that this group of facilities in the state would not be the target of this legislation.

Thank you.

EXAMINER FIZER: Thank you, sir. Others wishing to comment?

Senator?

(WHEREUPON, a discussion was had off the record.)

SENATOR CRAIGO: I would make a comment and would be happy to answer any questions anyone may have of me. I was one of the people that participated in the process from the legislative standpoint.

I would suggest to you that your Rule is painting with an extremely broad brush, and far exceeds what was perceived to be at the time legislative intent, and I would urge that you reconsider your action on that and certainly not get into any emergency Rules that make life much more

difficult.

Whether or not it should be done away with completely or whether or not we should refine our definition, I think there's a few things there.

EXAMINER FIZER: Other comments?

MS. BARNETTE: I was sent by the West Virginia Council of Home Health Agencies to represent them.

EXAMINER FIZER: Would you come forward, please.

MS. BARNETTE: I just have a brief statement.

EXAMINER FIZER: Identify yourself for the record, please.

MS. BARNETTE: I'm Betty Barnette, member of the West Virginia Council for Home Health Care Agencies.

Basically, what we have is we were notified, first thing we heard about this, through the West Virginia Council, was at a meeting in Flatwoods

the 13th of this month -- 12th of this month, and we were really concerned that we didn't have enough information on this. We would like more clarification and possible exemption, if possible.

EXAMINER FIZER: Thank you.

MS. BARNETTE: Please notify the West Virginia Council.

EXAMINER FIZER: Others wishing to comment this morning?

(WHEREUPON, no response was made.)

EXAMINER FIZER: There being no other comments, we shall bring to a close this segment of public comments.

Thank you.

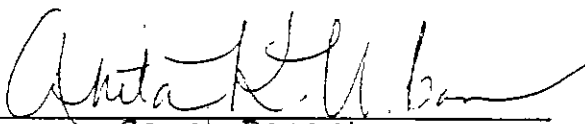
(WHEREUPON, the hearing was concluded at 10:42 a.m.)

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, the undersigned, Anita K. Urban,
Court Reporter, do hereby certify that the foregoing
is, to the best of my skill and ability, a true and
accurate transcript of all the testimony adduced or
proceedings had in the aforementioned case, as set
forth in the caption hereof.

Given under my hand this 19th day of
July, 1991.



Court Reporter
Notary Public