

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #8

FILED
1988 SEP 19 PM 1:57
SECRETARY OF STATE

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: WV Health Care Cost Review Authority TITLE NUMBER: 16-5F

DATE EMERGENCY RULE WAS ORIGINALLY FILED: July 19, 1988


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

IS THIS THE SECOND EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:
No

DATE OF FIRST EMERGENCY AMENDMENT: N/A

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

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE UPON FILING.


WALTER J. DALE
Chairman

EMERGENCY
WEST VIRGINIA LEGISLATIVE RULE
HEALTH CARE COST REVIEW AUTHORITY
CHAPTER §16-5F

SERIES XIII

Title: FINANCIAL DISCLOSURE RULE

Section 1. General

2. Introduction

3. Definitions

4. Newspaper Advertisements

5. Non-Hospital Covered Facilities

6. Covered Facilities That Are Hospitals

7. Additional Information

8. Hearings

9. Confidentiality

10. Public Access To Information

11. Injunctions

12. Penalties For Failure To Comply

13. Severability

EMERGENCY
WEST VIRGINIA LEGISLATIVE RULE
HEALTH CARE COST REVIEW AUTHORITY
CHAPTER §16-5F

SERIES XIII

FILED
1988 SEP 19 PM 1:57
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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 (hereinafter referred to as "the Act"), West Virginia Code, § 16-5F-1 et seq. Pursuant to the provisions of West Virginia Code, § 16-29B-16(a), the board of the Health Care Cost Review Authority replaced the Director of the Department of Health for the administration of the Act.

1.2. Authority. - West Virginia Code, § 16-5F-3(a), § 16-29B-8(a), and -16(a).

1.3. Filing Date. - September 19, 1988.

1.4. Effective Date. - September 19, 1988.

§ 65-13-2. Introduction.

2.1. The purpose of this rule is to formally implement the provisions of the Act. Heretofore, the board and before it the Department of Health implemented the Act with a set of informal guidelines. This rule is intended to

Emergency
HCCRA
Leg. Rule, 16-5F
Series XIII, Sec. 2

bring the program into conformity with the provisions of West Virginia Code, § 29A-3-1 et seq.

2.2. It is not the purpose of this rule to replace, modify, amend, or limit in any fashion the programs implemented by the board under the provisions of West Virginia Code, § 16-29B-17 & -18 (Uniform Reporting System and Annual Wage and Salary Survey), § 16-29B-22 ("Legislative Rules To Implement Utilization And Quality Assurance Program - Phase 1", 65 C.S.R. 4 (1985)), or West Virginia Code, § 16-29B-10(b) (Professional Services Vendor Contracts). Those programs shall continue until they are specifically amended elsewhere. However, to some extent the present rule requires the submission of the same or similar information. Because the definition of "covered facility" under the Act includes a "hospital" as that term is defined at West Virginia Code, § 16-29B-3(e), certain provisions of this rule will duplicate the other filing requirements. In no event shall this rule be construed as requiring duplicate filings from any such "hospital." A single filing containing all of the required information shall be sufficient for the purpose of both statutes.

§ 65-13-3. Definitions.

3.1. The term "the Act" means the Health Care Facility Financial Disclosure Act, West Virginia Code, § 16-5F-1 et seq.

Emergency
HCCRA
Leg. Rule, 16-5F
Series XIII, Sec. 3

3.2. The term "annual report" means an annual financial report for the covered facility's fiscal year prepared by an accountant or the covered facility's auditor.

3.3. The term "the board" means the three-member body created by West Virginia Code, § 16-29B-5, and which is designated to administer the programs under the Act.

3.4. The term "covered facility" means any hospital or other health care facility with fifteen or more inpatient beds, whether publicly owned, operated for profit or operated as a not for profit facility and whether licensed, or unlicensed, but does not include personal care homes as the same are defined at West Virginia Code, § 16-5C-2. The term does include any facility which provides either skilled nursing care or intermediate nursing care, or both.

3.5. The term "hospital" means any health care facility licensed as such under the provisions of West Virginia Code, § 16-5B-1, and any other acute care facility operated by the state government which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons; but, does not include any federally owned or operated facility or state owned or operated mental health facilities or state owned or operated long-term care facilities. The term does include speciality hospitals such as, but not limited to, acute care psychiatric and rehabilitation hospitals.

3.6. The term "rates" means all rates, fees, or charges imposed by any covered facility for health care services.

3.7. The term "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.

§ 65-13-4. Newspaper Advertisements.

4.1. Every covered facility shall cause to be published as a Class I legal advertisement, pursuant to West Virginia Code, § 59-3-2, in a qualified daily newspaper published within the county within which the covered facility is located, an annual report prepared by the covered facility's auditor or an independent accountant. The annual report shall contain only those items specified in section 4.5 of this rule and prepared in accordance with generally accepted accounting principles.

4.2. If no daily newspaper is published within the county, then the covered facility shall select a qualified newspaper which is published outside the county but which has the widest circulation within the covered facility's county.

4.3. The newspaper advertisement must be published within one hundred and twenty (120) days after the end of each covered facility's fiscal year. Upon a showing of good cause, the board may grant an extension of this

Emergency
HCCRA
Leg. Rule, 16-5F
Series XIII, Sec. 4

time period. A copy of the advertisement must be filed with the board within thirty (30) days of its publication.

4.4. The annual report shall pertain to the individual covered facility; that is, if the covered facility is a division or a subsidiary of another entity which owns or operates other covered facilities, then the annual report shall apply to the division or subsidiary and shall not pertain to the aggregate of the covered facilities of the other entity.

4.5. The annual report shall contain a complete statement of the following:

4.5.1. Balance sheet.

4.5.2. Income statement.

4.5.3. Statement of changes in financial position.

4.5.4. 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 period reported unless the covered facility is duly registered on the New York stock exchange, American stock exchange, any regional stock exchange, or its stock is traded actively over the counter. Also, the report shall state in every instance without limitation the complete ownership of a hospital (however it may be structured) where that ownership is, in whole or in part, by another entity which is not a natural person.

4.5.5. 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 shall be available for public inspection and copying at the board's office.

4.6. Under the provisions of West Virginia Code, § 59-3-2, a Class I legal advertisement must be published in only one newspaper and need not be published in two (2) newspapers of opposite politics. In selecting the newspaper within which to publish its annual report, the covered facility shall select the one of widest, daily circulation in its county.

4.7. Further, West Virginia Code, § 59-3-2, also prohibits the use of a Sunday edition of any newspaper.

§ 65-13-5. Non-Hospital Covered Facilities.

5.1. In addition to the newspaper advertisement that must be published pursuant to section 4 of this rule, each covered facility that is not a hospital (either in whole or in part) shall file with the board annual reports, records, and other information. Except where another time period is stated, all such annual reports, records, and other information shall be filed with the board by the facility within one hundred and twenty (120) days after the end of the facility's fiscal year; except that, upon a showing of good cause, the board may grant an extension of that time period as well as any other time period stated herein.

5.2. The facility shall file an annual, audited financial report in its entirety as prepared and presented by the facility's auditor or independent

Emergency
HCCRA
Leg. Rule, 16-5F
Series XIII, Sec. 5

accountant together with all accompanying notes, schedules, and documents as required by the American Institute of Certified Public Accountant's (AICPA) audit guides. In the event that an audited financial report is not prepared by the facility, the facility shall submit the following:

5.2.1. A statement of revenue and expenses.

5.2.2. A statement of changes in financial position.

5.2.3. A balance sheet.

5.3. The annual, audited financial report (or the substituted documents specified in subsection 5.2.1 et al.) shall pertain to the individual facility; that is, if the facility is a division or a subsidiary of another entity which owns or operates other covered facilities, then the annual, audited financial report (or its substitute) shall apply to the division or subsidiary and shall not pertain to the aggregate of the facilities of the other entity.

5.4. The facility shall file a statement of the total financial needs of the facility and the resources that are available or are expected to become available to meet such needs. The facility shall file its approved budget and its annual capital expenditures budget for the forthcoming fiscal year. The formats for the budgets may be that customarily used by the facility for its own internal purposes; except that, at a minimum the budget must state the projected patient revenue and expenses by individual cost center and the details of other anticipated revenues and expenses.

Emergency
HCCRA
Leg. Rule, 16-5F
Series XIII, Sec. 5

5.5 The facility shall file a statement of services available and of services rendered by completing and returning to the board a copy of its Annual Report of Nursing Homes within thirty (30) days of its receipt of the blank form.

5.6. The facility shall file a complete schedule of its then current rates for all patient services provided by the facility at the close of its fiscal year.

5.7. If the facility is certified under the federal medicare or medicaid programs, the facility shall file a complete copy of all cost reports that are submitted by it to the medicare intermediaries and to the medicaid state agency. If such a cost report is not prepared, then the facility shall file a complete schedule of costs allocated to each category of costs, in accordance with the standards of the state medicaid office.

5.8. The facility shall file a statement of all charges, fees, or salaries (whether in cash or other species) for goods or services rendered to the facility together with the name and address of the entity which rendered the goods or services for the period reported which exceeds the sum or the equivalent of fifty-five thousand (\$55,000.00) dollars. This requirement does not apply to payments made or due as a result of a patient's stay at the facility.

5.9. The facility shall file a statement of all charges, fees, or other sums (whether in cash or other species) collected by the facility and the name and address from whom collected for or on the account of any person, firm, partnership, corporation, or other entity, however structured, which shall exceed

the sum of or the equivalent of fifty-five thousand (\$55,000.00) dollars during the period reported. This requirement does not apply to payments made or due as a result of a patient's stay at the facility.

5.10. If specifically requested by the board, a facility shall file a trial balance for the period reported which request shall allow the facility at least fifteen (15) days to respond.

5.11. If the facility or its parent entity must file a form 10K with the federal Securities and Exchange Commission, then the facility shall file a copy of that form 10K with the board on an annual basis and within fifteen (15) days of the filing of the form with the federal agency.

5.12. Any data or material that is furnished to the board pursuant to the provisions of section 5.7 of this rule need not be separately refiled by the facility.

§ 65-13-6. Covered Facilities That Are Hospitals.

6.1. In addition to the newspaper advertisements that must be published pursuant to section 4 of this rule, each covered facility that is a hospital (including those hospitals that have distinct part units such as skilled nursing care, intermediate nursing care, psychiatric, or rehabilitation care) shall file with the board annual reports, records, and other information. Except where another time period is stated, all such annual reports, records, and other

Emergency
HCCRA
Leg. Rule, 16-5F
Series XIII, Sec. 6

information shall be filed with the board by the facility within one hundred and twenty (120) days after the end of the facility's fiscal year; except that, upon a showing of good cause, the board may grant an extension of that time period as well as any other time period stated herein.

6.2. The facility shall file an annual, audited financial report in its entirety as prepared and presented by the facility's auditor or independent accountant together with all accompanying notes, schedules, and documents as required by the American Institute of Certified Public Accountant's (AICPA) audit guides. In the event that an audited financial report is not prepared by the facility, the facility shall submit the following:

- 6.2.1. An income statement.
- 6.2.2. A statement of changes in financial position.
- 6.2.3. A balance sheet.

6.3. The annual, audited financial report (or the substituted documents specified in subsection 6.2.1 et al.) shall pertain to the individual facility; that is, if the facility is a division or a subsidiary of another entity which owns or operates other covered facilities, then the annual, audited financial report (or its substitute) shall apply to the division or subsidiary and shall not pertain to the aggregate of the facilities of the other entity. It is noted that this section does not encompass situations such as that of Charleston Area Medical Center which operates several divisions under one corporate umbrella and which are located within one city.

Emergency
HCCRA
Leg. Rule, 16-5F
Series XIII, Sec. 6

6.4. The facility shall file a statement of the total financial needs of the facility and the resources that are available or are expected to become available to meet such needs. The facility shall file its approved budget and its annual capital expenditures budget for the forthcoming fiscal year at least thirty (30) days prior to the start of that fiscal year; provided that, upon a showing of good cause, the board may change that time period. The formats for the budgets may be that customarily used by the facility for its own internal purposes; except that, at a minimum the budget must state the projected patient revenue and expenses by individual cost center and the details of anticipated other operating and non-operating revenues and expenses.

6.5. The facility shall file a statement of services available and of services rendered by completing and returning to the board a copy of its annual survey report for the American Hospital Association within fifteen (15) days of its tendering the report to that Association.

6.6. The facility shall file a complete schedule of its then current rates for all patient services provided by the facility at the close of its fiscal year.

6.7. If the facility is certified under the federal medicare or medicaid programs, the facility shall file a complete copy of all cost reports that are submitted by it to the medicare intermediaries and to the medicaid state agency. If such a cost report is not prepared, then the facility shall file a

Emergency
HCCRA
Leg. Rule, 16-5F
Series XIII, Sec. 6

complete schedule of costs allocated to each category of costs, in accordance with the standards of the state medicaid office.

6.8. The facility shall file a statement of all charges, fees, or salaries (whether in cash or other species) for goods or services rendered to the facility together with the name and address of the entity which rendered the goods or services for the period reported which exceeds the sum or the equivalent of fifty-five thousand (\$55,000.00) dollars. This requirement does not apply to payments made or due as a result of a patient's stay at the facility.

6.9. The facility shall file a statement of all charges, fees, or other sums (whether in cash or other species) collected by the facility and the name and address from whom collected for or on the account of any person, firm, partnership, corporation, or other entity, however structural, which shall exceed the sum of or the equivalent of fifty-five thousand (\$55,000.00) dollars during the period reported. This requirement does not apply to payments made or due as a result of a patient's stay at the facility.

6.10. A trial balance for the period reported.

6.11. If the facility or its parent entity must file a form 10K with the federal Securities and Exchange Commission, then the facility shall file a copy of that form 10K with the board on an annual basis and within fifteen (15) days of the filing of the form with the federal agency.

6.12. If the facility (which is a hospital for the purpose of this rule) is not subject to the provisions of the Health Care Cost Review Authority Act,

Emergency
HCCRA
Leg. Rule, 16-5F
Series XIII, Sec. 6

West Virginia Code, § 16-29B-1 et seq., and the rules promulgated thereunder, then the facility shall also make the following filings. An example of such a facility is a free-standing, rehabilitation hospital.

6.12.1. A copy of the Health Care Cost Review Authority Financial Report (otherwise known as the Uniform Reporting System) heretofore adopted pursuant to West Virginia Code, § 16-29B-17.

6.12.2. Copies of any contract that the facility 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 hospital for those services by the providers; except that, simple admitting privileges to the facility shall not be construed as being such a contract.

6.12.3. A complete copy of the Uniform Bill-82 (UB-82) data for each and every one of its inpatients including those that are incurred by the federal medicare and medicaid programs. If the board obtains another source for some of the data, then the board may excuse the facility of providing that portion. The UB-82 data must be submitted to the board (or its agent) on Industry Standard 1600 BPI tape or upon Wang format tape or upon similar computer tape format. If the board later chooses to specify some other format for the data, it shall issue an appropriate procedural rule specifying that format. Hard copies of the UB-82 data are not to be submitted without the prior approval of the board. It is especially directed that the board and any of its officers, employees or

Emergency
HCCRA
Leg. Rule, 16-5F
Series XIII, Sec. 6

agents selected by it to store and manipulate the data shall maintain the confidentiality of all personal medical information personally identifiable to a purchaser. The facilities shall submit and the board's agent shall collect such confidential data from the UB-82 forms. Reference shall be made to the "Legislative Rules To Implement Utilization Review And Quality Assurance Program - Phase 1," 65 C.S.R. 4 (1985), and its successor rules in the application of this subsection 6.12.4 of this rule.

6.12.4. The provisions of this section 6.12 and its subparts are expressly based upon the provisions of West Virginia Code, § 16-5F-3(a)(2) & (3) and § 16-5F-4(b)(6).

6.13. Any data or material that is furnished to the board pursuant to the provisions of section 6.7 of this rule need not be separately refiled by the facility.

§ 65-13-7. Additional Information.

7.1. Whenever further fiscal information is deemed by the board to be necessary to verify the accuracy of any information set forth in any statement, schedule, or report filed by a covered facility under the provision of the Act or of this rule, the board shall require the production of any records necessary to verify such information.

Emergency
HCCRA
Leg. Rule, 16-5F
Series XIII, Sec. 7

7.2. From time to time, the board may engage in or carry-out analyses and studies relating to health care costs, the financial status of any covered facility or any other appropriate related matters, and make determinations of whether, in its opinion, the rates charged by a covered facility are economically justified.

7.3. Upon at least ten (10) days notice to the covered facility, the board may specify that the facility supply it with other reports of the costs incurred in rendering services or the board may require the filing of fiscal information by a facility relating to any matter affecting the cost of health care services in this state.

§ 65-13-8. Hearings - Pursuant to the provisions of West Virginia Code, § 16-29B-8(a)(2) and -12, the board may conduct a hearing as part of any investigation it undertakes under the Act or this rule.

§ 65-13-9. Confidentiality - The board, 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.

§ 65-13-10. Public Access To Information - All reports, statements, and schedules filed with the board under the Act or this rule (with the exceptions

Emergency
HCCRA
Leg. Rule, 16-5F
Series XIII, Sec. 10

stated in subsection 6.12.3 and section 9) shall be open to public inspection and shall be available for examination during regular business hours of the board. Copies of such reports, statements, and schedules shall be made available to the public upon request and the board may charge its reasonable and customary fees in making copies of such reports.

§ 65-13-11. Injunctions - Whenever it appears that any covered facility, required to file or publish such reports, statements, and schedules as are required by the Act or this rule, has failed to file or publish such items, the board's general counsel or the office of the attorney general, upon the direction or request of the board, may apply in the name of the state to, and the circuit court of the county in which such covered facility is located shall have jurisdiction for the granting of a mandatory injunction to compel compliance with the provisions of the Act or of this rule.

§ 65-13-12. Penalties For Failure To Comply - Every covered facility failing to make and transmit to the board any of the reports required by law or failing to publish or distribute the reports as so required, shall forthwith be notified by the board by use of the certified United States mail, return receipt requested, and if such failure continues for ten days after receipt of said notice, such delinquent facility shall be subject to a penalty of one thousand dollars for each day thereafter that such failure continues, such penalty to be recovered by the

Emergency
HCCRA
Leg. Rule, 16-5F
Series XIII, Sec. 12

board through the attorney general or its general counsel in a civil action and paid into the state treasury to the account of the general fund. Review of any final judgment or order of the circuit court shall be by appeal to the West Virginia Supreme Court of Appeals.

§ 65-13-13. Severability - If any provision or provisions of this rule or the application thereof to any entity or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of this rule which can be given effect without the invalid provision or provisions or application and to this end the provision of this rule are declared to be severable.



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help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

August 29, 1988

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Health Care Cost Review Authority (HCCRA)

RULE: New Rule; Series 13, Financial Disclosure Rule

DATE FILED AS AN EMERGENCY RULE: July 19, 1988

DECISION NO. 15-88

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

KEN HECHLER
Secretary of State

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OFFICE OF THE SECRETARY OF STATE

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help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

DECISION EMERGENCY RULE DECISION (ERD 15-88)

AGENCY: Health Care Cost Review Authority (HCCRA)
RULE: New Rule; Series 13, Financial Disclosure Rule
FILED AS AN EMERGENCY RULE: July 19, 1988

- par. 1 The HCCRA has filed a new series rule as an emergency.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The HCCRA has filed this emergency rule with supporting documents with the Secretary of State on July 19, 1988 and with the LRMRC on July 19, 1988.

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

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

§16-5F-3. General powers and duties of the director of the department of health regarding reporting and review.

(a) In addition to the powers granted to the director of the department of health elsewhere in this article, the director shall have the powers as indicated by this section and it shall be his duty to:

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

(2) Require the filing of fiscal information by covered facilities relating to any matter affecting the cost of health care services in this state.

(See also §16029B-16(a))

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

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

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

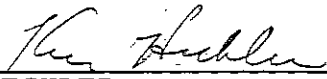
par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the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

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

The West Virginia Health Care Facility Financial Disclosure Act, W. Va. Code §16-5F-1 et seq., has operated since 1977 without formal regulations. An informal set of guidelines was adopted by the Health Department and those guidelines have been in use since then. Recently, several facilities have refused to submit disclosure items covered by the Act because the guidelines were not properly adopted rules. In order to keep

the program functional, it is necessary to implement a formal legislative rule at once. Section 1(5) of the Act states that "The public has a right to know the financial position of hospitals and related facilities." Without this rule, that right will be defeated.

- par. 13 It is not only the public's interest, but the public's right to have its laws complied with those parties required to be regulated.
- par. 14 It is the determination of the Secretary of State that this proposal meets the standards for emergency rule.
- par. 15 This decision shall be cited as Emergency Rule Decision 15-88 or ERD 15-88 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the HCCRA, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

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