

OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

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OFFICE WEST VIRGINIA
SECRETARY OF STATE



Betty Ireland
Secretary of State

June 30, 2005

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: DEPARTMENT OF HEALTH & HUMAN RESOURCES

RULE: AMENDMENTS, 78CSR3, MINIMUM LICENSING REQUIREMENTS FOR
GROUP RESIDENTIAL FACILITIES IN WEST VIRGINIA

DATE FILED AS AN EMERGENCY RULE: JUNE 29, 2005

DECISION NO. 3-05

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

A handwritten signature in cursive script, appearing to read "Betty Ireland", written over a horizontal line.

BETTY IRELAND
Secretary of State

Building 1, Suite 157-K
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Charleston, West Virginia 25305

EMERGENCY RULE DECISION
(ERD 3-05)

AGENCY: DEPARTMENT OF HEALTH AND HUMAN RESOURCES
RULE: AMENDMENTS, 78CSR3, MINIMUM LICENSING REQUIREMENTS
FOR GROUP RESIDENTIAL FACILITIES IN WEST VIRGINIA
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- par. 1 The Department of Health and Human Resources (DHHR) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 W. Va. 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].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The DHHR filed this emergency rule with supporting documents with the Secretary of State June 29, 2005 and with the LRMRC June 29, 2005.
- par. 7 It is the determination of the Secretary of State that the DHHR has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- W. Va. Code §49-2B-4(a) reads:

The commissioner shall promulgate rules in accordance with the provisions of §§29A-1-1 et seq. of this code regarding the licensure, approval, certification and registration of child care facilities and the implementation of the provisions of this article.
- par. 9 It is the determination of the Secretary of State that the DHHR has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) 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 DHHR are as follows:

This rule may allow for the DHHR to pull down additional federal funds. Approval of this emergency rule will allow the WV DHHR to generate approximately \$1 - \$1.5 million annually in federal reimbursement. The WV DHHR faces a deficit that may run as high as one hundred fifty million dollars. If this rule is not approved to allow redirection of federal funds to this particular program, DHHR loses the opportunity for full federal participation.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "prevent substantial harm to the public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 3-05 or ERD 3-05 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Department of Health and Human Resources, the Attorney General and the Legislative Rule Making Review Committee.


BETTY IRELAND
Secretary of State

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