



OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

Betty Ireland
Secretary of State

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

July 21, 2006

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Human Services

RULE: Amendments, 78CSR3, Minimum Licensing Requirements for Group Residential Facilities in West Virginia

DATE FILED AS AN EMERGENCY RULE: June 26, 2006

DECISION NO. 10-06

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".

BETTY IRELAND
Secretary of State

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

EMERGENCY RULE DECISION
(ERD 10-06)

AGENCY: Human Services
RULE: Amendments, 78CSR3, Minimum Licensing Requirements for Group Residential Facilities in West Virginia
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- par. 1 The Division of Human Services (Division) 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 Division filed this emergency rule with supporting documents with the Secretary of State June 26, 2006 and with the LRMRC June 26, 2006.
- par. 7 It is the determination of the Secretary of State that the Division 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(b) reads:
b) The secretary shall review the rules promulgated pursuant to the provisions of this article at least once every five years, making revisions when necessary or convenient: Provided, That on or before the first day of September, two thousand six, the department shall promulgate emergency rules pursuant to the provisions of article three, chapter twenty-nine-a of this code that amends and replaces licensing requirements for group residential programs for children, 78 CSR 3, and child placing agencies for children, 78 CSR 2. Provided, however, That on or before the first day of July, two thousand six, the

department shall promulgate emergency rules pursuant to the provisions of article three, chapter twenty-nine-a of this code that creates requirements for informal family child care homes and relative family child care homes that voluntarily register with the department. All individuals, facilities, entities, programs, agencies or family child care homes subject to said emergency rules shall have one hundred eighty days to come into compliance after promulgation of such rules.

par. 9 It is the determination of the Secretary of State that the Division 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 Division are as follows:

HB 4790 requires the Division to promulgate emergency rules that amend & replace licensing requirements for group residential programs for children. The proposed rule will eliminate the need for dual licensure for residential child care agencies by both the Bureau for Children & Families & the Office of Health Facilities Licensure & Certification.

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). . . "immediate preservation of public peace, health safety or welfare," "time limitation" and "to prevent substantial harm to the public interest."

par. 14

This decision shall be cited as Emergency Rule Decision 10-06 or ERD 10-06 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Human Services, the Attorney General and the Legislative Rule Making Review Committee.



BETTY IRELAND
Secretary of State

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