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February 26, 2002

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: NURSING HOME ADMINISTRATORS LICENSING BOARD

RULE: AMENDMENTS, 21CSR1, NURSING HOME ADMINISTRATORS

DATE FILED AS AN EMERGENCY RULE: FEBRUARY 20, 2002

DECISION NO. 4-02

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.


JOE MANCHIN, III
Secretary of State

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SECRETARY OF STATE



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EMERGENCY RULE DECISION
(ERD 4-01)

AGENCY: NURSING HOME ADMINISTRATORS LICENSING BOARD
RULE: AMENDMENTS, 21CSR1, NURSING HOME ADMINISTRATORS
FILED AS AN EMERGENCY RULE: FEBRUARY 20, 2002

- par. 1 The Nursing Home Administrators Licensing Board (Board) 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 Board filed this emergency rule with supporting documents with the Secretary of State February 20, 2002 and with the LRMRC February 20, 2002.

par. 7 It is the determination of the Secretary of State that the Board 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 §30-25-7(3) reads:

Promulgate reasonable legislative rules in accordance with and subject to the provisions of §29A-3-1 et seq. of this code, for the proper performance of its duties and shall establish fees for examinations, permits, licenses and renewals sufficient to cover the costs of administration of this article.

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

Pursuant to WV Code 30-1-1a, the WV legislature declares that the fundamental purpose of licensure and registration is to protect the public. The fees that the Nursing Home Administrators Licensing Board generate are not adequate to cover the Board's operating expenses. Said fees are not sufficient for the Board to properly regulate nursing home administrators. As a result, the Board cannot sufficiently operate to perform its function of protecting the public. Therefore, the Board must increase its fees so that it can properly perform its duties and protect the public interest.

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). . . "to prevent substantial harm to the public interest"

par. 14

This decision shall be cited as Emergency Rule Decision 4-01 or ERD 4-01 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Nursing Home Administrators Licensing Board, the Attorney General and the Legislative Rule Making Review Committee.



JOE MANCHIN, III
Secretary of State

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