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(Plus all the volunteer
help we can get)

July 29, 1999

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: WEST VIRGINIA DIVISION OF REHABILITATION SERVICES

RULE: NEW RULE, SERIES 1, RON YOST PERSONAL ASSISTANCE SERVICES ACT BOARD

DATE FILED AS AN EMERGENCY RULE: JUNE 30, 1999

DECISION NO. 10-99

Following review under WV 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.



KEN HECHLER
Secretary of State

OFFICE OF THE SECRETARY OF STATE

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EMERGENCY RULE DECISION (ERD 10-99)

AGENCY: WEST VIRGINIA DIVISION OF REHABILITATION SERVICES
RULE: NEW RULE, SERIES 1, RON YOST PERSONAL ASSISTANCE
SERVICES ACT BOARD

FILED AS AN EMERGENCY RULE: JUNE 30, 1999

- par. 1 The West Virginia Division of Rehabilitation Services (Division) has filed the above new rule as an emergency rule.
- 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].
- 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 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 30, 1999 and with the LRMRC June 30, 1999.

par. 7 It is the determination of the Secretary of State that the Division 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 §18-10L-6 reads:

The division of rehabilitation services, as directed by the consumer board, shall propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code, necessary for the effective administration of this article including a sliding scale for funding based on the recipient's, as the employer, ability to contribute to the cost of services.

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 -- WV 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:

The statutory authority was passed during the 1999 Regular Session of the Legislature and the funds attached to the statute cannot be expended until there are rules in place to do so. If emergency rules were not established, the provision of services would be delayed to persons with severe disabilities.

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)

par. 14

This decision shall be cited as Emergency Rule Decision 10-99 or ERD 10 -99 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Division of Rehabilitation Services, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
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