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Secretary of State
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June 2, 2014

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Department of Veterans' Assistance

RULE: 86-2, Amendment, State Home for Veterans-Fiscal

DATE FILED AS AN EMERGENCY RULE: May 28, 2014

DECISION NO. 7-14

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 black ink that reads "Natalie E. Tennant".

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 7-14)

AGENCY: Department of Veterans' Assistance
RULE: 86-2, Amendment, State Home for Veterans-Fiscal
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- par. 1 The Department of Veterans' Affairs (Department) has filed the above amendment 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 Department filed this emergency rule with supporting documents with the Secretary of State May 28, 2014 and with the LRMRC May 28, 2014.
- par. 7 It is the determination of the Secretary of State that the Department 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 §9A-2-3 reads:

§9A-2-3. Powers of division of veterans' affairs.

The division of veterans' affairs is authorized and empowered to establish rules and regulations providing for the tenure, treatment, eligibility and discharge of eligible veterans at the veterans' home. The rules shall be promulgated to ensure that the division, in carrying out its duties, shall comply with all federal requirements imposed on such a facility. Moreover, notwithstanding any code provisions to the contrary, rules shall be promulgated that: (1) Meet federal standards for domiciliary care; (2) define domiciliary; (3) define admittance to comply with state and federal requirements including current West Virginia resident or enlisted in service from West Virginia, war time service or service during a declared national emergency, Veterans Administration eligibility requirements for per diem,

honorably discharged, suffering from a disability due to age, disease or defect that prevents them from earning a living.

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

Veterans Home, the West Virginia Department of Veterans Assistance established a transitional unit consisting of ten beds. Homeless Veterans are provided accommodations without cost while completing the admissions process that may take up to sixty days to complete.

President Obama and Veterans Affairs Secretary Shineski announced the goal of ending veteran homelessness by the end of 2015.

There is no fiscal impact on the cost and revenues of the Department of Veterans Assistance. Federal per diem supplements will offset costs.

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

par. 14

This decision shall be cited as Emergency Rule Decision 7-14 or ERD 7-14 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Department of Veterans' Assistance, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

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