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2014 JUN 30 P 3:43

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June 17, 2014

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Health and Human Resources

RULE: 69CSR8, Amendment, Chronic Pain Management Clinic Licensure

DATE FILED AS AN EMERGENCY RULE: May 20, 2014

DECISION NO. 13-14

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 13-14)

AGENCY: Health and Human Resources
RULE: 69CSR8, Amendments, Chronic Pain Management Clinic Licensure
FILED AS AN EMERGENCY RULE: May 20, 2014

- par. 1 The Health and Human Resources (DHHR) 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 DHHR filed this emergency rule with supporting documents with the Secretary of State May 20, 2014 and with the LRMRC May 20, 2014.
- 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 -- SB 265 passed April 13, 2013 and effective July 12, 2013 reads:

*(b) The legislative rule filed in the State Register on January 7, 2013, authorized under the authority of section nine, article five-h, chapter sixteen of this code, relating to the Department of Health and Human Resources (chronic pain management clinic licensure, 69 CSR 8), is authorized with the following amendments:
On page one, subsection 1.4, line eleven, following the number "2013.", by inserting the following words:*

This rule is effective upon the date specified in an emergency rule promulgated by the Department of Health and Human Resources as being the date funding for implementation of Chronic Pain Management Clinic Licensure will become available pursuant to a duly enacted appropriation bill authorizing the expenditure of funds for that purpose."

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:

When 69 CSR 8 was originally drafted, 57 pain clinics were identified in the state with an estimate of the actual number exceeding 100. OHFLAC does not currently have a unit or the staff to absorb the activity of licensing pain clinics and assessing complaints. In order to license and survey pain clinics for compliance with the rule, OHFLAC needs to hire a program manager, four health facility nurse surveyors, and an office assistant. Funding for this purpose will become available July 1, 2014, pursuant to the Budget Bill, Senate Bi11306, duly enacted during the 2014 Regular Session of the Legislature.

This rule is effective upon the date specified in an emergency rule promulgated by the Department of Health and Human Resources as being the date funding for implementation of Chronic Pain Management Clinic Licensure will become available pursuant to a duly enacted appropriation bill authorizing the expenditure of funds for that purpose." W.Va. Code of State Rules 69-8-1.4.

The purpose of this rule is to ensure all West Virginia pain management clinics conform to a common set of standards and procedures. However, inspection and licensure of pain clinics has not yet begun, since funding for the creation of the new unit within the DHHR Office of Health Facility Licensure and Certification was not appropriated until the 2014 Regular Session of the Legislature.

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 of West Virginia Code and prevent substantial harm to the public interest.

par. 14

This decision shall be cited as Emergency Rule Decision 13-14 or ERD 13-14 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Health and Human Resources, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

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