

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #3

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2015 JUL 31 A 10:02

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Department of Health and Human Resources *Human Services* TITLE NUMBER: 78

CITE AUTHORITY: W. Va. Code 9-9-11(d)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 23

TITLE OF RULE BEING PROPOSED: W. Va. Works Program Sanctions

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Authorized Signature

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: W. Va. Works Program Sanctions

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Department of Health and Human Resources

Address: Bureau for Children and Families  
Attn. Jim Weekley, CFO  
350 Capitol Street, Rm 730  
Charleston, W. Va. 25301

Phone Number: (304) 356-4544 Email: Jim.K.Weekley@wv.gov

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No impact on costs or revenue.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

| <b>FISCAL YEAR</b>                 |   |                                      |   |
|------------------------------------|---|--------------------------------------|---|
| Effect of Proposal                 | Current Increase/Decrease<br>(use "--") | Next Increase/Decrease<br>(use "--") | Fiscal Year<br>(Upon Full Implementation) |
| <b>1. Estimated Total Cost</b>     |   |                                      |   |
| Personal Services                  |   |                                      |   |
| Current Expenses                   |   |                                      |   |
| Repairs & Alterations              |   |                                      |   |
| Assets                             |   |                                      |   |
| Other                              |   |                                      |   |
| <b>2. Estimated Total Revenues</b> |   |                                      |   |

Rule Title: W. Va. Works Program Sanctions

Rule Title: \_\_\_\_\_

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Since the Department had established and imposed sanctions prior to the requirement of promulgating a legislative rule, it is not anticipated that there will be a fiscal impact.

Date: \_\_\_\_\_

7/30/2015

Signature of Agency Head or Authorized Representative

Karen L. Bowler

**W. Va. WORKS PROGRAM SANCTIONS**

**BRIEF SUMMARY OF THE RULE**

This rule establishes scheduled sanctions; identifies factors and considerations for sanctions; defines terms; provides notice and reasons for sanctions; establishes emergency rule authority; and, establishes due process procedures in contested cases when sanctions are imposed.

**STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE PROPOSED RULE**

This rule has been legislatively mandated by Senate Bill 274, which was passed on March 14, 2015. By establishing and imposing sanctions that take into account other contiguous states' sanction policies and/or rules, better outcomes for individuals and families to attain self-sufficiency increases.

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: \_\_\_\_\_

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Health and Human Resources  
Division of Family Assistance  
Attn. Betty Jo Scarberry, Director  
\_\_\_\_\_  
350 Capitol Street, Rm. B-18  
Charleston, W. Va. 250301  
\_\_\_\_\_  
(304) 356-4633

LEGISLATIVE RULE TITLE: \_\_\_\_\_  
W. Va. Works Program Sanctions

1. Authorizing statute(s) citation W. Va. Code 9-9-11(d)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 25, 2015

b. What other notice, including advertising, did you give of the hearing?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
July 25, 2015

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
Attached \_\_\_\_\_ No comments received X

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

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f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Betty Jo Scarberry, Director  
350 Capitol Street, Rm. B-18  
Charleston, W. Va. 2502

(304) 356-4633  
(304) 558-2059 (fax)  
Betty.Jo.Scarberry@wv.gov

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g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

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b. Date of hearing or comment period:

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c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

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d. Attach findings and determinations and reasons:

Attached 

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**78 CSR 23**

**Title 78**

**Legislative Rule**

**Department of Health and Human Resources**

**SERIES 23**

**W. Va. Works Program Sanctions**

**RESPONSE TO PUBLIC COMMENTS**

On June 25, 2015, the Department of Health and Human Resources commenced a 30-day public comment period, accepting written comments through 5:00 p.m. on July 25, 2015. The Department did not receive any comments regarding the proposed legislative rule.

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #8

Do Not Mark In This Box  
Filing Date

Effective Date

**NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE**

AGENCY: West Virginia Department of Health and Human Resources TITLE NUMBER: 78

DATE EMERGENCY RULE WAS ORIGINALLY FILED: June 25, 2012

FIRST EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

SECOND EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

DATE OF FIRST EMERGENCY AMENDMENT: \_\_\_\_\_

SERIES NUMBER OF RULE: 23

TITLE OF RULE: W. Va. Works Program Sanctions

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

The West Virginia Secretary of State Office notified the agency that section 7 (Emergency Rule) needed to be removed because the authority for promulgating an emergency rule is only authorized by the W. Va. Code and not by rule.

Use additional sheets if necessary

  
Authorized Signature

78 CSR 23

FILED

2015 JUL 31 A 10:02

TITLE 78  
LEGISLATIVE RULE  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 23  
W. Va. Works Program Sanctions

**1. General.**

1.1. Scope. - This rule establishes and sets forth the schedule of sanctions; identifies factors and considerations for sanctions; provides notice and reasons for sanctions, and, establishes due process procedures in contested cases when sanctions are imposed by the West Virginia Department of Health and Human Resources in the administration of the West Virginia Works Program pursuant to provisions of W. Va. Code § 9-1-1 et seq.

1.2. Authority. - W. Va. Code § 9-9-11(d).

1.3. Filing date. - \_\_, 2015.

1.4. Effective date. - \_\_, 2015.

1.5. Purpose - This rule establishes and sets forth the schedule of sanctions; identifies factors and considerations for sanctions; provides notice and reasons for sanctions; and establishes due process procedures in contested cases when sanctions are imposed by the West Virginia Department of Health and Human Resources in the administration of the West Virginia Works Program pursuant to provisions of W. Va. Code § 9-9-1 et seq. In developing this rule, the Department has considered contiguous states in developing sanctions that discourage individuals from moving from other states into this state in an effort to take advantage of lesser sanctions imposed for the same or similar violation and ensures better outcomes for individuals and families to attain self-sufficiency.

**2. Definitions.**

2.1. Assistance Group - All at-risk individuals living in a residence together who purchase and prepare meals for the group.

2.2. De minimis Violation - A minor violation or failure to perform a required act required by this rule. A de minimis violation is not per se an automatic sanction violation but could be actionable or result in a sanction if the violation is willful or determined not to constitute good cause.

2.3. Department - The West Virginia Department of Health and Human Resources.

2.4. Good Cause - A legitimate excuse for failing to perform an act required by a Personal Responsibility Contract or Self-Sufficiency Plan such as, including but not limited to, physical and mental capacity or the unavailability of child care. See, Income Maintenance Manual Chapter 13.10

2.5. Personal Responsibility Contract - Is a written contract between each of the adult(s) or emancipated minor(s) of the WV WORKS program, or non-recipient Work-Eligible Individual(s), and the Department Worker, as the representative of the Department.

2.6. Sanction Violation - A violation that results in the termination of a beneficiary's cash assistance. A sanction violation includes, but is not limited to, fraud, noncompliance of the personal responsibility contract, failure or refusal to comply with the requirements of the work component may adversely affect the beneficiary's WV WORKS eligibility or the amount of his WV WORKS check. See, Income Maintenance Manual, Chapter 9.

2.7. Self-Sufficiency Plan - Is a written plan that lists the goals of each individual and the tasks necessary to accomplish those goals.

2.8. Termination - The act of ending a beneficiary's cash assistance for the term specified by the sanction.

2.9. Work-Eligible Individual - Is an individual that is not included in the WV WORKS payment but is required to participate in an activity.

**3. Breach of Personal Responsibility Contract, Fraud or Deception, Code Violation, Rule Violation and Department Policy.**

3.1. The department shall terminate, unless good cause exists, cash assistance benefits to an at-risk family if it finds any of the following:

3.1.a. Fraud or deception by the beneficiary in applying

for or receiving program benefits;

3.1.b. A substantial breach by the beneficiary of the requirements and obligations set forth in the personal responsibility contract and any amendments or addenda to the contract; or

3.1.c. A violation by the beneficiary of any provision of the personal responsibility contract or any amendments or addenda to the contract, Ch. 9, Art. 9, or any rule or policy promulgated by the secretary pursuant to this Ch. 9, Art. 9 of the W. Va. Code.

3.1.d. When a member of the Assistance Group or non-recipient Work-Eligible Individual does not comply with requirements found on his Personal Responsibility Contract or Self-Sufficiency Plan, termination of benefits may be imposed unless the Worker determines that good cause exists.

#### **4. Sanctions.**

4.1. Sanctions Are applied in the form of termination of benefits for a length of term. The length of termination of benefits is determined as follows:

First sanction -- entire assistance group ineligible for one month.

Second sanction -- entire assistance group ineligible for 3 months.

Third sanction -- entire assistance group ineligible for 6 months.

Fourth and subsequent or ongoing sanctions -- entire assistance group ineligible for 12 months.

#### **5. Notice.**

5.1. In the event the department determines that benefits received by the beneficiary are subject to reduction or termination, written notice of the reduction or termination and the reason for the reduction or termination shall be deposited in the United States mail, postage prepaid and addressed to the beneficiary at his or her last-known address at least thirteen days prior to the termination or reduction.

5.2. The notice shall state the action being taken by the department and grant the beneficiary a reasonable opportunity to be heard at a fair and impartial hearing before the department in accordance with administrative procedures established by the department and due process of law.

**6. Burden of Proof.**

6.1. In any hearing conducted pursuant to the provisions of this rule, the beneficiary has the burden of proving that his or her benefits were improperly reduced or terminated and shall bear his or her own costs, including attorneys' fees.

~~7. Emergency Rule.~~

~~7.1. The Department shall have authority to promulgate emergency rules, in accordance with section fifteen, article three, chapter twenty nine a of the W. Va. Code, to discourage individuals from moving from other states into this state in an effort to take advantage of lesser sanctions should the Department determine that sanctions applied by contiguous states are more stringent for the same or similar violation.~~