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September 3, 2015

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Health and Human Resources

RULE: New rule, 78CSR23, West Virginia Works Program Sanctions

DATE FILED AS AN EMERGENCY AMENDMENT: July 31, 2015

DATE FIRST FILED AS AN EMERGENCY RULE: June 25, 2015

DECISION NO. 9-15

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.

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 9-15)

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par. 1 The West Virginia Health and Human Resources (DHHR) has filed the above new 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 June 25, 2015 and with the LRMRC June 25, 2015.

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 -- W. Va. Code §9-9-11(d) reads:

(d) The secretary shall promulgate emergency rules and propose for legislative promulgation legislative rules, pursuant to article three, chapter twenty-nine-a of this code, setting forth the schedule of sanctions to be imposed when a beneficiary has violated any provision of this article, of his or her personal responsibility contract or any amendment or addendum to the contract, or any applicable department rule. In developing these rules, the

secretary is directed to make those sanctions graduated and sufficiently stringent, when compared to those of contiguous states, so as to discourage persons from moving from such states to this state to take advantage of lesser sanctions being imposed for the same or similar violations by the secretary. The secretary shall also promulgate legislative rules setting forth what constitutes de minimis violations and those violations subject to sanctions and maximum penalties

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:

The passage of S.B. 274, amended and reenacted 9-9-11, relating to Temporary Assistance for Needy Families, specifically directs the West Virginia Department of Health and Human Resources to promulgate an emergency rule.

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). . . "time limit established by the Code..."

par. 14

This decision shall be cited as Emergency Rule Decision 9-15 or ERD 9-15 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Health and Human Resources.



NATALIE E. TENNANT
Secretary of State

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