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November 23, 2015

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Health and Human Resources

RULE: New Rule, 69CSR10, West Virginia Clearance for Access: Registry and Employment Screening

DATE SECOND EMERGENCY AMENDMENT FILED AS AN EMERGENCY RULE:
October 23, 2015

DATE FIRST EMERGENCY AMENDMENT FILED AS AN EMERGENCY AMENDMENT:
July 17, 2015

DATE ORIGINALLY FILED AS AN EMERGENCY RULE: July 17, 2015

DECISION NO. 12-15

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 12-15)

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- par. 1 The Department of Health and Human Resources (DHHR) has filed the above emergency amendment to an existing emergency.
- 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 amendment to an emergency rule with supporting documents with the Secretary of State October 23, 2015 and with the LRMRC October 23, 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 §16-46-9(a) reads:

§16-46-9. Rules; penalties; confidentiality; immunity.

(a) The secretary shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement the provisions of this article. The secretary may promulgate emergency rules, if justified, pursuant to section fifteen, article three, chapter twenty-nine-a of this code as may be required.

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 West Virginia Clearance for Access: Registry and Employment Screening Act was passed by the Legislature in 2015 as W.Va. Code §§ 16-49-1, *et seq.* The Act requires the Secretary for the Department of Health and Human Resources to propose rules for legislative approval to implement the provisions of the Act, and permits the promulgation of emergency rules. See *W Va. Code § 16-49-9(a)*.

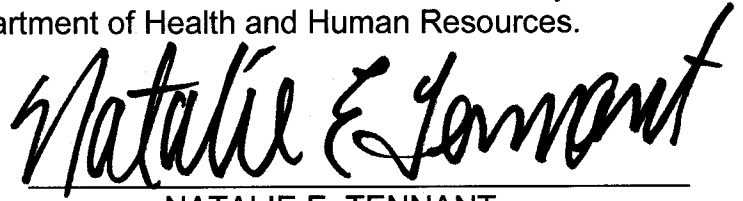
This rule establishes criminal background check requirements for applicants for employment as direct access personnel in long-term care facilities. This rule includes definitions and sets forth disqualifying offenses and disqualification time periods; establishes requirements for prescreening applicants on online registries; requires state and federal finger-print based criminal history record information searches; provides for conditional employment, variances and appeals.

The WV CARES rule must be effective before completing the full Legislative cycle, and promulgation is necessary for the immediate preservation of the public health, safety, and welfare, and to prevent substantial harm to the public interest.

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). . . "for the immediate preservation of the public health, safety and welfare" and "to prevent substantial harm to the public interest"

par. 14

This decision shall be cited as Emergency Rule Decision 12-15 or ERD 12-15 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Department of Health and Human Resources.



NATALIE E. TENNANT
Secretary of State

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