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December 15, 2015

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Health and Human Resources

RULE: New Rule, 69CSR9, Neonatal Abstinence Centers

DATE FILED AS EMERGENCY AMENDMENT: December 8, 2015

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

DECISION NO. 13-15

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 13-15)

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par. 1 The Department of Health and Human Resources (DHHR) has filed the above emergency amendment 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 amendment with supporting documents with the Secretary of State December 8, 2015 and with the LRMRC December 8, 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 §16-2M-2(a) reads:

§16-2M-2. Rules; minimum standards for neonatal abstinence centers.

(a) The secretary shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-two of this code to carry out the purpose of this article. These rules shall include at a minimum:

(1) Licensing procedures for neonatal abstinence centers. These procedures shall be in place by July 1, 2015;

(2) The minimum standards of operation for neonatal abstinence facilities including the following:

(A) Minimum numbers of administrators, medical directors, nurses, aides and other personnel according to the occupancy of the facility;

(B) Qualifications of facility's administrators, medical directors, nurses, aides and other personnel;

(C) Safety requirements;

(D) Sanitation requirements;

(E) Therapeutic services to be provided;

(F) Medical records;

(G) Pharmacy services;

(H) Nursing services;

(I) Medical services;

(J) Physical facility;

(K) Visitation privileges; and

(L) Admission, transfer and discharge policies.

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 Legislature passed a law in 2015 creating a license for a new type of facility to treat babies diagnosed with neonatal abstinence syndrome. The law requires that the Department of Health and Human Resources promulgate emergency rules by July 1, 2015, to carry out the purposes of the law, and to address all aspects of the licensing, regulation, and operation of these types of centers. See *W Va. Code* § 16-2N-2. The rule is unique in that no other state issues a license for this type of stand-alone facility.

This rule establishes licensing and regulatory requirements for facilities that will operate as centers for the care and accommodation of infants with neonatal abstinence syndrome and neonatal opiate withdrawal syndrome. This rule provides

for guidance in the operation of the facility as well as the standard of care for treatment of patients. The rule establishes definitions and creates requirements for licensure, the facility and its operation, staffing, patients' rights, care plans and interventions, as well as counseling, education and record retention.

The Neonatal Abstinence Centers 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. And

The Legislative Rule-making Review Committee approved a modified version of this rule on November 18, 2015, and the Agency seeks to keep the Emergency Rule consistent with the Modified 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). . . "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 13-15 or ERD 13-15 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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