

Natalie E. Tennant

Secretary of State
State of West Virginia

Office of the Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

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Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Fax: (304) 558-0900
www.wvsos.com

July 1, 2016

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Risk and Insurance Management

RULE: Amendment, 115CSR7, Patient Injury Compensation Fund

DATE FILED AS AN EMERGENCY RULE: June 6, 2016

DECISION NO. 8-16

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, reading "Natalie E. Tennant", is written over a horizontal line.

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 8-16)

AGENCY: Risk and Insurance Management
RULE: Amendment, 115CSR7, Patient Injury Compensation Fund
FILED AS AN EMERGENCY RULE: June 6, 2016

- par. 1 The Risk and Insurance Management (BRIM) 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 BRIM filed this emergency rule with supporting documents with the Secretary of State June 6, 2016 and with the LRMRC June 6, 2016.
- par. 7 It is the determination of the Secretary of State that the BRIM 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 §55-7B-9c(m) reads:

(m) The Legislature hereby finds that an emergency exists compelling promulgation of an emergency rule, consistent with the provisions of this section, governing the criteria for designation of a facility as a trauma center or provisional trauma center and implementation of a statewide trauma/emergency care system. The Legislature therefore directs the Secretary of the Department of Health and Human Resources to file, on or before July 1, 2003, emergency rules specifying the criteria for designation of a facility as a trauma center or provisional trauma center in accordance with nationally accepted and

recognized standards and governing the implementation of a statewide trauma/emergency care system. The rules governing the statewide trauma/emergency care system shall include, but not be limited to:

(1) System design, organizational structure and operation, including integration with the existing emergency medical services system;

(2) Regulation of facility designation, categorization and credentialing, including the establishment and collection of reasonable fees for designation; and

(3) System accountability, including medical review and audit to assure system quality. Any medical review committees established to assure system quality shall include all levels of care, including emergency medical service providers, and both the review committees and the providers shall qualify for all the rights and protections established in article three-c, chapter thirty of this code.

par. 9 It is the determination of the Secretary of State that the BRIM 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:

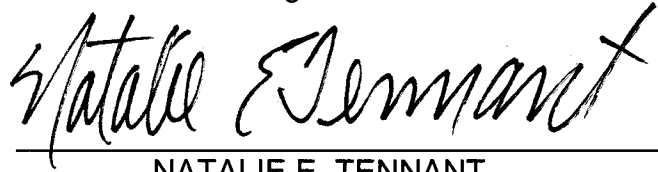
(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent 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 BRIM are as follows:

The Legislature enacted SB 602 during the 2016 Regular Session, which closed the Patient Injury Compensation Fund (PICF) to all claims filed on or after July 1, 2016. In addition, the bill amended sections of Chapter 29, Article 12D, which broadens BRIM's authority regarding the manner in which claims are paid from available PICF moneys. It is not expected that the PICF will have sufficient funds to pay all claims received through June 30, 2016 in full immediately following closure of the fund. On the contrary, SB 602 established new funding sources that will transfer into the fund over a period of approximately 4 years. BRIM will need the discretion to determine the most appropriate and efficient use of available moneys as early as July, 2016 when the fund is closed and BRIM will begin run-off of the claims. BRIM's discretion, established by SB 602, includes payment of claims via pro-rata payments, periodic installments, structured settlements, or placing claims in non-payment status pending receipt of additional moneys into the fund. Absent an emergency rule, BRIM would not have sufficient options regarding payment of claims that is needed by July 1, 2016.

- 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). . . Prevent substantial harm to the public interest
- par. 14 This decision shall be cited as Emergency Rule Decision 8-16 or ERD 8-16 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Risk and Insurance Management.



NATALIE E. TENNANT
Secretary of State

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