



**Mac Warner**  
Secretary of State  
State of West Virginia

Office of the Secretary of State  
State Capitol  
Charleston, West Virginia 25305

FILED

2017 JUL 20 P 2: 34

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

July 20, 2017

**NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE**

**AGENCY:** Health and Human Resources

**RULE:** Collection and Exchange of Data Related to Overdoses , 69CSR14

**DATE FILED AS AN EMERGENCY RULE:** June 27, 2017

**DECISION NO. 8-17**

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.

  
\_\_\_\_\_  
Mac Warner  
Secretary of State

EMERGENCY RULE DECISION  
(ERD 8-17)

- par. 1 The 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 and with LRMRC June 27, 2017.
- 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 §16-5T-5 reads:  
  
*§16-53-3. Rulemaking.*  
*The Secretary of the West Virginia Department of Health and Human Resources shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to effectuate the provisions of this article.*
- 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:

This legislative rule establishes (1) requirements to facilitate the exchange of data and information with and between the Office of Drug Control Policy, the Department of Health and Human Resources and its Bureaus, the Department of Military Affairs and Public Safety, the Department of Administration, the Administrator of Courts, the Poison Control Center, and the Board of Pharmacy; and (2) the reporting of suspected or reported overdoses by law-enforcement agencies, health care providers, emergency response providers, pharmacies and medical examiners. These rules apply to the Office of Drug Control Policy, the Department of Health and Human Resources and its Bureaus, the Department of Military Affairs and Public Safety, the Department of Administration, the Administrator of Courts, the Poison Control Center, the Board of Pharmacy, law-enforcement agencies, health care providers, emergency response providers, pharmacies and medical examiners.

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 public peace, health, safety or welfare"

par. 14 This decision shall be cited as Emergency Rule Decision 8-17 or ERD 8-17 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Health and Human Resources.

*Mac Warner*

Mac Warner  
Secretary of State

Entered \_\_\_\_\_

2017 JUL 20 P 2:37  
FILED