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July 20, 2017

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Human Services

RULE: New Rule, 78CSR26, Pilot Program for Drug Screening of Applicants for Cash Assistance

DATE FILED AS AN EMERGENCY RULE: June 27, 2017

DECISION NO. 5-17

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.

A handwritten signature in cursive script that reads "Mac Warner".

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Mac Warner  
Secretary of State

EMERGENCY RULE DECISION  
(ERD 5-17)

- par. 1 Human Services 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 Human Services 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 Human Services 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 §9-3-6N reads:  
  
*(n) The secretary shall promulgate emergency rules pursuant to the provisions of article three, chapter twenty-nine-a to prescribe the design, operation and standards for the implementation of this section.*
- par. 9 It is the determination of the Secretary of State that Human Services 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 Human Services are as follows:

The Drug Screening Pilot Program was approved to move forward from Administration for Children and Families (ACF) our Federal Partners. All applicants who would be eligible for TANF and are in the Cash Assistance Group would complete a drug screening questionnaire. If they refuse to complete the questionnaire they will be ineligible for TANF. Based on three or more positive responses by the applicant indicating drug usage on the questionnaire. Reasonable suspicion the applicant will be required to register for drug testing within 7 days. Any applicant who has a positive drug test shall complete a substance abuse treatment and counseling program and a job skills program approved by the Secretary. An applicant may continue to receive benefits from the TANF Program while participating. Second positive drug test will be suspended from the TANF Program for 12 months. Third positive drug test will result in the applicant be terminated from the TANF Program.

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 5-17 or ERD 5-17 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Human Services.

*Mac Warner*

Mac Warner  
Secretary of State

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