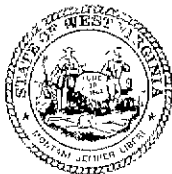


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September 20, 1999

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Family Protection Services Board

RULE: New Rule, Series 2, Licensure of Domestic Violence and Perpetrator Intervention Program

DATE FILED AS AN EMERGENCY RULE: August 12, 1999

DECISION NO. 13-99

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.


KEN HECHLER
Secretary of State

SEP 20 1999
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EMERGENCY RULE DECISION
(ERD 13-99)

AGENCY: Family Protection Services Board
RULE: New Rule, Licensure of Domestic Violence and Perpetrator Intervention Programs

FILED AS AN EMERGENCY RULE: August 12, 1999

- par. 1 The Family Protection Services Board (Board) 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 Board filed this emergency rule with supporting documents with the Secretary of State August 12, 1999 and with the LRMRC August 12, 1999.

par. 7 It is the determination of the Secretary of State that the Board 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 §48-2C-4 reads:

It is the duty of the board to:

- (a) Regulate its procedural practice;*
- (b) Receive and consider applications for the development of shelters;*
- (c) Facilitate the formation and operation of shelters;*
- (d) Promulgate rules to implement the provisions of this article and any applicable federal guidelines;*
- (e) Advise the secretary on matters of concern relative to his or her responsibilities under this article;*
- (f) Study issues pertinent to family protection shelters, programs for domestic violence victims, and report the results to the governor and the Legislature;*
- (g) Conduct hearings as necessary under this article;*
- (h) Delegate to the secretary such powers and duties of the board as the board may deem appropriate to delegate, including, but not limited to, the authority to approve, disapprove, revoke or suspend licenses;*
- (i) Deliver funds to shelters within forty-five days of the approval of a proposal for such shelters;*
- (j) Establish a system of peer review which will ensure the safety, well-being and health of the clients of all shelters operating in the state;*
- (k) Evaluate annually each funded shelter to determine its compliance with the goals and objectives set out in its original application for funding or subsequent revisions;*
- (l) To award to shelters, for each fiscal year, ninety-five percent of the total funds collected and paid over during the fiscal year to the special revenue account established pursuant to section twenty-four, article one of this chapter and to expend, during said period a sum not in excess of five percent of said funds for cost of administering provisions of this article;*
- (m) Establish and enforce system of standards for annual licensure for all shelters and programs in the state;*
- (n) Enforce standards; and*
- (o) Review its rules biannually.*

par. 9 W. Va. Code §48-2C-13 further states:

The board shall promulgate rules and regulations to effectuate the provisions of this article. The rules and regulations shall not take effect until the first set of rules and regulations are approved by the Legislature.

par. 10 It is the determination of the Secretary of State that the Board has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (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.

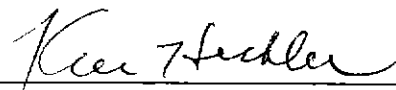
par. 12 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 13 The facts and circumstances as presented by the Board are as follows:

This emergency rule will establish standards regarding the minimum level of responsibility, service and accountability required for providers of domestic violence perpetrator intervention programs. Approximately eight perpetrator intervention programs have been established throughout the state that are not licensed and have no uniform standards regarding operation or licensing opportunities. This emergency rule also revises standards regarding the minimum level of responsibility, service and accountability required for domestic violence programs. Without immediate regulation, some of these programs may be jeopardizing the safety of victims by not having confidentiality policies, appropriate staff training, screening criteria, etc. There are 13 licensed domestic violence programs in the state. All of the domestic violence programs provide shelter services to victims and their children.

par. 14 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. 15 This decision shall be cited as Emergency Rule Decision 13-99 or ERD 13-99 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Family Protection Services Board, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
Secretary of State

Entered _____

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