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(Plus all the volunteer  
help we can get)

August 3, 1998

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

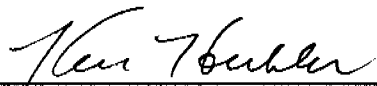
**AGENCY:** Division of Health

**RULE:** New Rule, Series 7, Reportable diseases, Events and Conditions

**DATE FILED AS AN EMERGENCY RULE:** July 1, 1998

**DECISION NO. 8-98**

Following review under WV 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.

  
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**KEN HECHLER**  
Secretary of State

OFFICE OF THE  
SECRETARY OF STATE

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**EMERGENCY RULE DECISION**  
**(ERD 8-98)**

**AGENCY:** Division of Health  
**RULE:** New Rule, Series 7, Reportable Diseases, Events and Conditions  
**FILED AS AN EMERGENCY RULE:** July 1, 1998

- par. 1 The Division of Health (Division) has filed the above new rule as an emergency rule.
- par. 2 West Virginia 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: WV 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 Division filed this emergency rule with supporting documents with the Secretary of State July 1, 1998 and with the LRMRC July 1, 1998.
- par. 7 It is the determination of the Secretary of State that the Division has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency

rule.

par. 8 (B) Statutory Authority -- WV Code §16-3-1 reads:

*The state director of health is empowered to establish and strictly maintain quarantine at such places as he may deem proper and forbid and prevent the assembling of the people in any place, when the state director of health or any county or municipal health officer deems that the public health and safety so demand, and the state board of health may adopt rules and regulations to obstruct and prevent the introduction or spread of smallpox or other communicable or infectious diseases into or within the State, and the state director of health shall have the power to enforce these regulations by detention and arrest if necessary. The state director of health shall have power to enter into any town, city, factory, railroad train, steamboat or other place whatsoever and enter upon and inspect private property for the purpose of investigating the sanitary and hygienic conditions and the presence of cases of infectious diseases, and may, at his discretion, take charge of any epidemic or endemic conditions, and enforce such regulations as the state board of health may prescribe. All expenses incurred in controlling any endemic or epidemic conditions shall be paid by the county or municipality in which such epidemic occurs.*

par. 9 It is the determination of the Secretary of State that the Division has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV 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 Division are as follows:

Emergency filing of this rule is requested to comply with legislative intent of HB 4483 as drafted by the House and Senate Health Subcommittees, in addition to the need to preserve the public safety of high risk adolescents. an emergency filing will prevent the delay of implementing the provisions of hepatitis B vaccine for high risk adolescents who may contract this viral sexually transmissible disease. Emergency filing is necessary in order to protect the public health.

The recent Institute of Medicine (IOM) report, The Hidden Epidemic, recommends that "all publicly sponsored health clinics should provide or arrange for hepatitis B immunizations for their adolescent patients according to the Advisory Committee on

Immunization Practices (ACIP) guidelines." The IOM report further states that given the difficulty in reaching adolescents in health care settings, public health officials should ensure that adolescents who are not immunized in health care settings are immunized through school-based or other community programs. It is proposed that this can be accomplished in West Virginia through public STD clinics. Further, it is a responsibility of public health officials to make a good faith effort to comply with this recommendation.

The 1998 Guidelines for Sexually Transmitted Diseases states, "Although methods used to prevent other STDs should prevent Hepatitis B virus (HBV) infection, hepatitis B vaccination is the most effective means of preventing HBV infection. Vaccination of persons with a history of STDs is part of a comprehensive strategy to eliminate HBV transmission in the US (Centers for Disease Control and Prevention, 1998.)"

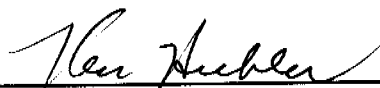
National and WV sexually transmitted disease data was reviewed for the most recent few years and found to indicate the US averages for the adolescent cases of gonorrhea and chlamydia were 25% of reported cases. In WV adolescents comprised 33% of gonorrhea cases and 41% of reported chlamydia cases. In the last few years, up to 25% of reported acute hepatitis B cases have been in adolescents. This data does not capture adolescents with chronically infected hepatitis B.

The National Immunization Program, through funding for the Vaccines for Children Program, has approved the use of hepatitis B vaccine through age 18. Therefore, the Division of Surveillance and Disease Control, Immunization Program will be able to supply hepatitis B vaccine needed to immunize high risk adolescents accessing STD clinics at local health departments.

Given that sexually active adolescents are clearly at risk for hepatitis B, that the Bureau for Public Health has access to a large number of these high risk adolescents (33 to 41% of all individuals visiting STD clinics), and that an effective prevention measure is now available, we strongly recommend that this rule be emergency filed, thus allowing administration of vaccine to high risk adolescents in STD clinics as soon as possible. Not doing so extends the time in which numerous WV teens remain at risk for a serious and possible life threatening disease despite the fact that an effective intervention is available.

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 peace, health, safety or welfare*

par. 14 This decision shall be cited as Emergency Rule Decision 8-98 or ERD 8-98 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Health, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER  
Secretary of State

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SECRETARY OF STATE

Aug 4 9 06 AM '98

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