

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900
E-Mail WVSOS@Secretary.State.WV.US



STATE OF WEST VIRGINIA
SECRETARY OF STATE
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

CATHERINE FREROTTE
Executive Assistant

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

October 9, 1998

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: DIVISION OF HEALTH

RULE: AMENDMENTS, SERIES 64, AIDS-RELATED MEDICAL TESTING & CONFIDENTIALITY

DATE FILED AS AN EMERGENCY RULE: SEPTEMBER 3, 1998

DECISION NO. 13-98

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.

A handwritten signature in black ink that reads "Ken Hechler".

KEN HECHLER
Secretary of State

OFFICE OF THE
SECRETARY OF STATE

Oct 9 4 10 PM '98

FILED

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900
E-Mail WVSOS@Secretary.State.WV.US



STATE OF WEST VIRGINIA
SECRETARY OF STATE
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

CATHERINE FREROTTE
Executive Assistant

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

EMERGENCY RULE DECISION
(ERD 13-98)

AGENCY: DIVISION OF HEALTH
RULE: AMENDMENTS, SERIES 64, AIDS-RELATED MEDICAL TESTING & CONFIDENTIALITY

FILED AS AN EMERGENCY RULE: SEPTEMBER 3, 1998

- par. 1 The Division of Health (Division) has filed the above amendments to an existing 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 September 3, 1998 and with the LRMRC September 3, 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 16-3C-2(e)(2) reads in part:

The performance of an HIV-related test in documented bona fide medical emergencies, as determined by a treating physician taking into account the nature and extent of the exposure to another person, when the subject of the test is unable or unwilling to grant or withhold consent, and the test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment to a medical or emergency responder, or any other person who has come into contact with a source patient in such a way that a significant exposure necessitates HIV-testing or to a source patient who is unable to consent in accordance with regulations proposed by the department for approval by the legislature in accordance with §29A-3 of this code: Provided, That necessary treatment may not be withheld pending HIV test results: Provided, however, That all sampling and HIV-testing of samples of blood and body fluids, without the expressed written consent of the test subject, shall be through the use of a pseudonym and in accordance with regulations proposed by the department for approval by the Legislature in accordance with §29A-3 of this code: Provided further, That the department shall propose emergency rules pursuant to the provisions of §29A-3-15 of this code on or before the 1st day of September, 1998.

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 are as follows:

Emergency filing of Legislative Rule 64CSR64 is mandated pursuant to the provisions of WV Code §16-3C-2(e)(2) addressing confidentiality, costs associated with testing, documentation, post-test counseling, post-exposure prophylaxis and other matters.

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). . . "mandated by the Legislature."

par. 14 This decision shall be cited as Emergency Rule Decision 13-98 or ERD 13-98 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

Entered _____

OFFICE OF THE SECRETARY OF STATE

Oct 9 4 10 PM '98

FILED