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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE CLERK OF THE WEST VIRGINIA LEGISLATURE

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April 18, 1999

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NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Loretta Haddy
Surveillance & Disease Control
1422 Washington St., East
Charleston, WV 25301

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **AIDS-Related Medical Testing and Confidentiality, 64CSR64**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Health, Department of Health and Human Resources

Subject: AIDS-Related Medical Testing and Confidentiality, 64CSR64

PERTINENT DATES

Filed for public comment: September 17, 1998
Public comment period ended: October 23, 1998
Filed following public comment period: December 1, 1998
Filed LRMRC: December 1, 1998
Filed as emergency:

Fiscal Impact: None

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FILED

ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 2 relates to application of the proposed rule. It has been amended to provide that the proposed rule also applies to medical or emergency responders and their employers and spouses, sexual contacts and intravenous drug contacts who may be at risk of having acquired the HIV infection as a result of the possible exchange of body fluids.

Section 3 defines terms. Definitions from the Code have been added for the following terms: Body fluids; medical or emergency responders; patient or test subject or subject of the test; post-exposure care; significant exposure; and source patient.

Section 4 relates to testing. It sets forth the basis upon which a patient may be asked to voluntarily consent to an HIV test. It has been amended to permit a request where the results of HIV-testing of blood or body fluids may provide information important in the care of medical or emergency responders. It also provides that consent is not required for HIV testing of a source patient if the health care provider documents in the medical record of any

exposed medical or emergency responder that there has been a significant exposure and that in his or her judgement the information is medically necessary to determine the course of treatment for the medical or emergency responder.

Section 8 which relates to post-exposure care and treatment is new. It requires a health care facility to have access to a trained health care provider to assess the HIV exposure risk of medical or emergency responders during all working hours. It provides that the medical or emergency responder's employer is required to pay for the cost of the HIV test for the source patient and the responder.

Section 9 relates to confidentiality. It has been amended to provide that HIV test results may be disclosed to medical or emergency responders who have been subject to a significant exposure during the course of medical practice or in the performance of professional duties.

Section 10 relates to contact notification. It has been amended to require the Director to make a good faith effort to inform a spouse, sexual contact or intravenous drug contact that he or she may be at risk of having acquired the HIV infection as the result of the possible exchange of bodily fluids. It also provides that spouses, sexual contacts or intravenous drug contacts may be tested anonymously at the Division's designated test sites or at their own expense by a health care provider of their choice.

AUTHORITY

Statutory authority: W.Va. Code, §§16-3C-8 & 16-1-7, which provide, in part, as follows:

§16-3C-8.

(a) The commissioner of the bureau shall immediately implement and enforce the provisions of this article, and shall adopt rules to the extent necessary for further implementation of the article. The rules proposed by the bureau pursuant to this article may include procedures for taking appropriate action with regard to health care facilities or health care providers which violate this article or the rules promulgated hereunder...

\$16-1-7.

The secretary of the department of health and human resources shall have the power to promulgate such rules and regulations, in accordance with the provisions of chapter twenty-nine-a of the code, as are necessary and proper to effectuate the purposes of this chapter and prevent the circumvention and evasion thereof...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No, in fact many of the provisions of the rule are repetitious of the Code.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

To the extent that the new provisions merely repeat Code provisions, the proposed rule is not necessary

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.