

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #7

FILED

AUG -9 PM 3:42

STATE OF WEST VIRGINIA
ADMINISTRATIVE LAW DIVISION

NOTICE OF AN EMERGENCY RULE

AGENCY: Division of Health TITLE NUMBER: 64

CITE AUTHORITY: W. Va. Code, §18-5-22

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 66


TITLE OF RULE BEING FILED AS AN EMERGENCY: Specialized Health

Procedures in Public Schools

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

West Virginia Code §18-5-22 requires that a program for the provision of specialized health procedures by school employees other than school nurses begin by September 4, 1990 (school year begins). It is therefore necessary to file this rule, Specialized Health Procedures in Public Schools, on an emergency basis in order to comply with a time limitation set by the W. Va. Code.


Taunja Willis Miller, Secretary
Dept. of Health and Human Resources

[EMERGENCY]

TITLE 64

WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH

SPECIALIZED HEALTH PROCEDURES IN PUBLIC SCHOOLS

SERIES 66

1990

[EMERGENCY]
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH
SPECIALIZED HEALTH PROCEDURES IN PUBLIC SCHOOLS

64 CSR 66

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[EMERGENCY]
TITLE 64
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF HEALTH

SERIES 66
SPECIALIZED HEALTH PROCEDURES IN PUBLIC SCHOOLS

§64-66-1. General

1.1. Scope - This legislative rule establishes training requirements for and creates standards related to the performance of specialized health procedures in public schools.

1.2. Authority - W. Va. Code §18-5-22.

1.3. Filing Date - August 9, 1990

1.4. Effective Date - August 9, 1990

1.5. Public Comment Period -

1.6. Approval - This rule was approved by the director of the division of health on _____.

§64-66-2. Application

2.1. Application - This rule applies to public school employees who perform specialized health procedures.

§64-66-3. Definitions

3.1. School Employees - Teachers as defined in West Virginia Code §18-1-1 and aides as defined in West Virginia Code §18A-4-8.

3.2. School Nurse - A nurse certified as a school nurse by the West Virginia department of education.

3.3. Specialized Health Procedures - Procedures prescribed by a licensed physician which require health-related training for the individual who performs the procedures, including but not limited to, catheterization, suctioning of tracheostomy, nasogastric tube feeding or gastrostomy tube feeding.

§64-66-4. Training and Retraining

4.1. School employees, other than school nurses, who will provide specialized health procedures to students shall receive instruction acceptable to the department of education in basic first aid including the Heimlich maneuver, cardiopulmonary resuscitation, community emergency medical resources, and the procedures contained in "Section I - Basic Health Care Procedures" in the Basic and Specialized Health Care Procedure Manual for West Virginia Public Schools. Such section is incorporated herein by reference and is available from the West Virginia department of education.

4.2. School employees, other than school nurses, who will provide specialized health procedures to students shall receive training acceptable to the department of education in those specific specialized procedures they will perform. Such training shall be individualized and shall be provided through simulation or use of training models.

§64-66-5. Standards - The standards to be used in performing specialized health procedures are those contained in "Section II - Procedures for Providing Specialized Health Care" of the Basic and Specialized Health Care Procedure Manual for West Virginia Public Schools. Such section is incorporated herein by reference and is available from the West Virginia department of education. The list of specialized health procedures for which standards are hereby adopted is not a determination of which health procedures a school nurse may legally delegate authority.

§64-66-6. Revision of Training Courses and Standards - The director of the division of health may by order filed with the secretary of state amend such specialized health procedure standards as deemed necessary. Such revision shall take due consideration of the recommendations of the council of school nurses created by W. Va. Code §18-5-22 and the department of education.

§64-66-7. Severability - The provisions of this rule are declared to be severable. If any provisions of this rule shall be held invalid, the remaining provisions shall remain in effect.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

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Special Assistant

(Plus all the volunteer
help we can get)

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Sept. 12, 1990
ADMINISTRATIVE LAW DIVISION

September 12, 1990

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Health

RULE: New Rule, Series 66; Specialized Health Procedure in
Public Schools

DATE FILED AS AN EMERGENCY RULE: August 9, 1990

NO. 39-90

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER
Secretary of State

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Secretary of State

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Deputy Secretary of State

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DECISION EMERGENCY RULE DECISION (ERD 39-90)

AGENCY: Division of Health
RULE: New Rule, Series 66, Specialized Health Procedures in
Public Schools
FILED AS AN EMERGENCY RULE: August 9, 1990

- par. 1 The Division of Health has filed the above new rule as an emergency.
- 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(a)].
- 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 ERD 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 of Health has filed this emergency rule with supporting documents with the Secretary of State on August 9, 1990, and with the LRMRC on August 9, 1990.

par. 7 It is the determination of the Secretary of State that the Division of Health 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 §18-5-22 reads in part:

There shall be established a council of school nurses which shall be convened by the state board of education. This council shall prepare a procedural manual and shall provide recommendations regarding a training course to the director of the state department of health who shall consult with the state department of education. The state department of health shall then have the authority to promulgate rules and regulations to implement the training and to create standards used by those performing specialized health procedures.. .

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

par. 10 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

(g) 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 of Health are as follows:

West Virginia Code §18-5-22 requires that a program for the provision of specialized health procedures by school employees other than school nurses begin by September 4, 1990 (school year begins). It is therefore necessary to file this rule, Specialized Health Procedures in Public Schools, on an emergency basis in order to comply with a time limitation set by the W. Va. Code.

- 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(g) . . ."time limitation."
- par. 14 This decision shall be cited as Emergency Rule Decision 39-90 or ERD 39-90 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 Committee.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Sept. 12, 1990
ADMINISTRATIVE LAW DIVISION

Entered _____