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August 24, 2009

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Bureau for Public Health

RULE: Amendment, 64CSR67, Distribution of State Aid Funds to Local Boards of Health

DATE FILED AS AN EMERGENCY RULE: August 14, 2009

DECISION NO. 13-09

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.

A handwritten signature in cursive script, reading "Natalie E. Tennant".

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 13-09)

AGENCY: Bureau for Public Health
RULE: Amendment, 64CSR67, Distribution of State Aid Funds to Local Boards of Health
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- par. 1 The Bureau for Public Health (Bureau) has filed the above amendment to an existing 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 Bureau filed this emergency rule with supporting documents with the Secretary of State August 14, 2009 and with the LRMRC August 14, 2009.
- par. 7 It is the determination of the Secretary of State that the Bureau 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 §16-1-4(k)(2) reads:
- (k) The secretary shall propose a rule for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a or this code for the distribution of state aid to local health departments and basic public health services funds.*
- (2) The Legislature finds that an emergency exists and, therefore, the secretary shall file an emergency rule to implement the provisions of this section pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code. The emergency rule is*

subject to the prior approval of the Legislative Oversight Commission on Health and Human Resources Accountability prior to filing with the Secretary of State.

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

par. 10 (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. 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 Bureau are as follows:

HB 3195 passed April 11, 2009 and in effect from passage gives specific authority to the Secretary of DHHR to file this rule as an Emergency Rule subject to the prior approval of the Legislative Oversight Commission on Health & Human Resources Accountability (LOCHRRRA), prior to filing with the Secretary of State. This Emergency Rule was presented to and approved by LOCHRRRA at their meeting on August 10, 2009.

The emergency rule establishes a new fund formula for distribution of state funds to support local boards of health. There is a crisis in funding of public health. This rule begins the effort to ameliorate the problem.

The need to revise the formula used for distribution of state funds for support of local health departments has been under consideration of many years. After the CBER Study: "People at Risk" The Financial Crisis in WV Public Health, was released in December 2007, it has been the objection of the Association of Local Health Departments & the WV Bureau for Public Health to write & Institute a more fair & equitable method for distribution of the money to support local health departments appropriated each year by the Legislature for this purpose.

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 public peace, health safety or welfare" and "prevent substantial harm to the public interest"

par. 14

This decision shall be cited as Emergency Rule Decision 13-09 or ERD 13-09 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Bureau for Public Health, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

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