

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #4

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Nov 23 11 51 AM '98

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Division of Health, Dept. of Health and Human Resources TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code §27-14-2

AMENDMENT TO AN EXISTING RULE: YES NO

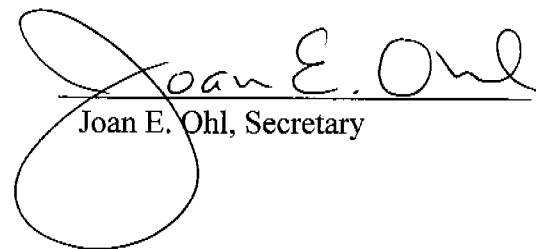
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 72

TITLE OF RULE BEING PROPOSED: Interstate Compact on Mental Health

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE
RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND
COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED
MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Joan E. Ohl, Secretary

\$3.20

**TITLE 64
LEGISLATIVE RULE
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 72
INTERSTATE COMPACT ON MENTAL HEALTH**

**MODIFIED PROPOSED RULE
AFTER REVIEW BY THE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

**TITLE 64
LEGISLATIVE RULE
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 72
INTERSTATE COMPACT ON MENTAL HEALTH**

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64CSR72
TITLE 64
LEGISLATIVE RULE
DIVISION OF HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

SERIES 72
INTERSTATE COMPACT ON MENTAL HEALTH

§64-72-1. General.

1.1. Scope - This legislative rule contains requirements for the proper and expeditious transfer of committed persons between West Virginia and other party states to the interstate compact on mental health. This rule should be read in conjunction with the provisions and definitions in the interstate compact on mental health appearing in W. Va. Code §27-14-1 et seq.

1.2. Authority - W. Va. Code § 27-14-2.

1.3. Filing Date - _____

1.4. Effective Date - _____

1.5. Construction - This rule shall be liberally construed to effectuate the compact goals of chapter 27 of the W. Va. Code.

§64-72-2. Application and Enforcement.

2.1. Application - This rule applies to the duties and authority of the compact administrator.

2.2. Enforcement - This rule is enforced internally by the secretary of the department of health and human resources or his or her designee.

§64-72-3. Definitions.

3.1. Compact - The interstate compact on mental health appearing in W. Va. Code §27-14-1 et seq. that provides for the proper and expeditious transfer from one state to another of persons who have been committed with mental deficiency or mental illness.

3.2. Compact administrator - The secretary of the department of health and human resources or his or her designee.

64CSR72

3.3. Dangerous or potentially dangerous patient - A person who has escaped from an institution in another state and poses a threat to society by his or her escape.

§64-72-4. Compact Administrator; Powers and Duties.

4.1. The compact administrator shall administer the compact in accordance with W. Va. Code § 27-14-1 et seq. and shall be the general coordinator of activities under the compact. The compact administrator shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by this state either in the capacity of sending or receiving state.

4.2. The compact administrator, subject to the approval of the state auditor, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into under the compact.

4.3. The compact administrator is not obligated to receive any patient from another party to the compact.

4.4. The compact administrator shall determine the place most suitable for the patient and may review at any time the placement and make changes in accordance with the best interests of the patient and the state.

4.5. The compact administrator is the only person authorized to issue an order requesting the detention of a dangerous or potentially dangerous patient who has escaped from an institution in another state.

4.5.a. Immediately upon learning that a dangerous or potentially dangerous escaped patient may be in West Virginia, the compact administrator may detain him or her through the issuance of a detention order.

4.5.b. Once identification has been made of an escaped patient, the compact administrator shall arrange to immediately return that individual to the state where he or she escaped. If the escaped patient cannot be immediately returned to the state where he or she escaped, the escaped patient shall be detained at an institution or a secure setting designated by the compact administrator until transfer is possible.

§64-72-5. Due Process.

5.1. When issuing a detention order, the compact administrator shall substantially recite the facts necessary to the validity of the order.

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5.2. Before a patient is returned to the state where he or she escaped, the compact administrator shall assure that the patient is informed: of the reason for his or her detention; of his or her right to a hearing to determine identification; and, if the patient decides to challenge the identification, of his or her right to have the representation of counsel provided at state expense.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

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

Subject: Interstate Compact on Mental Health, 64CSR72

PERTINENT DATES

Filed for public comment: June 23, 1998
Public comment period ended: July 23, 1998
Filed following public comment period: July 31, 1998
Filed LRMRC: July 31, 1998
Filed as emergency:

Fiscal Impact: None

FILED
OCT 23 10 53 AM '98
OFFICE OF THE CLERK OF THE HOUSE OF DELEGATES
SECRETARY OF STATE
COMMONWEALTH OF VIRGINIA

ABSTRACT

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 states that the proposed rule applies to the duties and authority of the compact administrator.

Section 3 defines terms.

Section 4 states that the compact administrator is the general coordinator of activities under the Compact. The compact administrator may make payments to discharge financial obligations of the State under the compact, subject to the approval of the Auditor. It provides that the compact administrator is the only person who may issue an order to detain a dangerous or potentially dangerous consumer who has escaped from an institution in another state.

Section 5 requires that a dangerous or potentially dangerous consumer who is being detained be afforded due process.

Section 6 is an unnecessary severability section.

AUTHORITY

Statutory authority: W.Va. Code, §27-14-2, which provides, in part, as follows:

...The director of health shall be the compact administrator and, acting jointly with like officers of other party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the compact...

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.

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

Yes. The West Virginia Supreme Court in *State ex rel. White v. Todd* in 1996 noted the lack of rules implementing the Interstate Compact on Mental Health.

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

Yes. It basically contains the standards set forth in the court opinion.

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.



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Nov 16 12 10 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

State Capitol - Room MB-49
Charleston, West Virginia 25305
Phone: (304) 347-4840
Fax: (304) 347-4919

email: tanders@mail.wvnet.edu
November 12, 1998

Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Marsha Dadisman
Health & Human Resources
Capitol Complex
Building 3, Room 265

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Interstate Compact on Mental Health, 64CSR72**

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. _____



FILED

Nov 16 12 18 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

State Capitol - Room MB-49
Charleston, West Virginia 25305
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NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Ted. J. Johnson
Mental Health & Community Rehabilitation
Capitol Complex
Building 6, Room B-717

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Interstate Compact on Mental Health, ⁶⁴46CSR72**

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