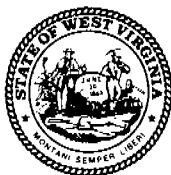


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(Plus all the volunteer
help we can get)

July 29, 1999

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: DIVISION OF HEALTH

RULE: NEW RULE, SERIES 74, BEHAVIORAL HEALTH CONSUMER RIGHTS

DATE FILED AS AN EMERGENCY RULE: JUNE 29, 1999

DECISION NO. 9-99

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 cursive script, appearing to read "Ken Hechler", written over a horizontal line.

KEN HECHLER
Secretary of State

SCANNED

OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

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**EMERGENCY RULE DECISION
(ERD 9-99)**

AGENCY: DIVISION OF HEALTH
RULE: NEW RULE, SERIES 74, BEHAVIORIAL HEALTH CONSUMER RIGHTS

FILED AS AN EMERGENCY RULE: JUNE 29, 1999

- par. 1 The Division of Health (Division) has filed the above new 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 June 29, 1999 and with the LRMRC June 29, 1999.
- 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 reads:

(j) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, authorized under the authority of section nine, article five, chapter twenty-seven, of this code, modified by the division of health to meet the objections of the legislative rule-making review committee, refiled in the state register on the twenty-fifth day of January, one thousand nine hundred ninety-nine, and withdrawn by the division on the eleventh day of February, one thousand nine hundred ninety-nine, relating to the division of health (licensed behavioral health service responsibilities and consumer rights, 64 CSR 74), is not authorized. The division of health is directed to refile the rule, with necessary modifications and in accordance with the memorandum of understanding between the division and various affected parties, as an emergency rule by the first day of July, one thousand nine hundred ninety-nine and propose said rule for legislative promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code.

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:

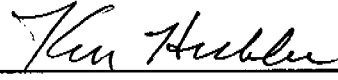
(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent 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 Division are as follows:

This proposed rule is being filed as emergency to meet the requirements set forth in Code §29A-3-15(f) "to comply with a time limitation established by this code or by a federal statute or regulation." The 1999 Legislature in SB 305, directed the Department to file this proposed rule as an emergency rule on or before July 1, 1999.

- 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). . . "time limitation"
- par. 14 This decision shall be cited as Emergency Rule Decision 9-99 or ERD 9-99 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

AUG 4 9 54 AM '99

FILED