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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

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December 04, 2000

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Beth Marquart
Health, Division of
Capitol Complex
Building 3, Room 265

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Needlestick Injury Prevention, 64CSR82**

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Health

Subject: Needlestick Injury Prevention, 64CSR82

PERTINENT DATES

Filed for public comment: July 14, 2000

Public comment period ended: August 15, 2000

Filed following public comment period: August 29, 2000

Filed LRMRC: August 29, 2000

Filed as emergency:

Fiscal Impact: None

OFFICE OF THE SECRETARY OF STATE
COMMONWEALTH OF VIRGINIA

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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 sets forth the facilities to which the rule applies.

Section 3 defines terms.

Section 4 sets forth the instances in which facilities are required to use needleless systems and also sets forth instances in which they are not required. If needleless systems are not used, it requires that needles with engineered sharps injury protection be used for withdrawal of body fluids, accessing a vein or artery, administration of medications or fluids, and any other procedure involving the potential for an exposure incident for which a needle device with engineered sharps injury protection is available.

Section 5 requires a facility to keep a sharps injury log and sets forth the requirements for the log, which is specified in the

statute. It provides that the log shall not contain any personal identifiers.

This section requires the facility prepare an annual report of needlestick injuries within the facility. It also requires facilities to supplement the annual report with quarterly reports to be submitted to the Director within 30 days of the close of each quarter.

Section 6 requires the Division of Health to maintain a list of existing needleless systems and needles and sharps with engineered injury protection. It sets forth characteristics of needles and sharps with engineered injury protection.

Section 7 requires facilities to provide training to all health care workers who are at risk for occupational exposure during working hours at no cost to the health care workers.

Section 8 requires employers to ensure that all employees who have declined to accept hepatitis B vaccination be offered a hepatitis vaccination annually thereafter. It requires a booster of hepatitis B or other vaccination series for HCV or HIV, which are recommended by the US Public Health Service, to be provided at no cost to the employee.

Section 9 requires all health care workers to use appropriate protective equipment when occupational exposure can be reasonably anticipated and requires the facilities to provide the equipment at no cost.

Section 10 sets forth standards for the placement of sharps containers.

Section 11 provides that the information reported under this rule and the statute is confidential and may not be disclosed except according to law.

Section 12 would allow the Division and health care professional licensing boards and agencies to distribute this rule to any facility that has a duty under this rule.

Section 13 requires facilities to comply with the statute and this rule as a condition for licensure, certification and permission to operate and provides for and allows the Director to

revoke or suspend the license, certificate or permission to operate.

Section 14 references the Division rule regarding contested case hearings and declaratory rulings.

AUTHORITY

Statutory authority: W.Va. Code, §16-36-2, which provides, in part, as follows:

...(a) On or before the first day of July, two thousand, the director shall, with the advice and cooperation of the advisory committee established under this article, propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code requiring facilities, as a condition of licensure certification or operation, to minimize the risk of needlestick and sharps injuries to health care workers. In developing the rules the director shall take into consideration the most recent guidelines of the occupational safety and health administration that relate to prevention of needlestick and sharps injuries...

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?

Yes. Section 12 of the proposed rule would allow the Division and Licensing Boards to distribute the rule. The Secretary of State's office is the only agency permitted to distribute rules under W.Va. Code §29A-2-8. However, with internet access to rules, this provision would seem to be obsolete.

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

Yes.

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 PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modification to suggest.