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August 11, 2010

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Department of health and Human Resources

RULE: New Rule, 64CSR98, Safety and Treatment Program

DATE FILED AS AN EMERGENCY RULE: June 30, 2010

DECISION NO. 11-10-10

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.


NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 11-10)

AGENCY: West Virginia Department of Health and Human Resources
RULE: New Rule, 64CSR98, Safety and Treatment Program
FILED AS AN EMERGENCY RULE: June 30, 2010

- par. 1 The West Virginia Department of Health and Human Resources (DHHR) has filed the above new 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 DHHR filed this emergency rule with supporting documents with the Secretary of State June 30, 2010 and with the LRMRC June 30, 2010.
- par. 7 It is the determination of the Secretary of State that the DHHR 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 §17C-5A-3(j)(2) reads:
- (2) The Legislature finds that an emergency exists and, therefore, the Secretary shall file by July 1, 2010, an emergency rule to implement this section pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code.*
- par. 9 It is the determination of the Secretary of State that the DHHR 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.

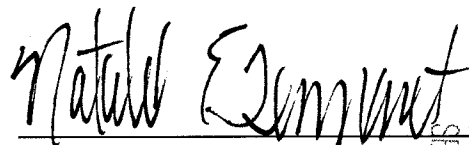
par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the DHHR are as follows:

The West Virginia legislature has in W. Va. Code 1 7C-5A-3, passed as SB 186 in the regular session of the 2010 legislature, found that an emergency exists and has required the Secretary of the Department of health and Human Resources to file an emergency rule by July 1, 2010.

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 11-10 or ERD 11-10 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Department of Health and Human Resources, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

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