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OFFICE OF THE SECRETARY OF STATE

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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, 64CSR99, Requirements for Licensure of Nonprofit Corporations for Conservator Service

DATE FILED AS AN EMERGENCY RULE: June 30, 2010

DECISION NO. 12-10-10

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 12-10)

AGENCY: West Virginia Department of Health and Human Resources  
RULE: New Rule, 64CSR99, Requirements for Licensure of Nonprofit Corporations for Conservator Service  
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 §44A-1-8(e) reads:

*(e) A nonprofit corporation chartered in this state may be appointed to serve as a guardian or conservator or as a limited or temporary guardian or conservator for a protected person if it is licensed to do so by the Secretary of Health and Human Resources. The secretary shall propose legislative rules, for promulgation in accordance with the provisions of chapter twenty-nine-a of this code, for the licensure of nonprofit corporations and shall provide for the review of the licenses. The rules shall, at a minimum, establish standards*

*to assure that any corporation licensed for guardianship or conservatorship:*

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:

West Virginia Code section 8(e), Article I, Chapter 44A requires the Secretary of the Department of Health and Human Resources to promulgate rules for licensure of nonprofit corporations prior to appointment as conservator. An immediate need for appointment of nonprofit corporations by circuit courts has been reported giving a pressing need to promulgate rules for licensure.

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 12-10 or ERD 12-10 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.

  
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NATALIE E. TENNANT  
Secretary of State

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