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March 16, 2001

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Health & Human Resources

RULE: New Rule, 69CSR5, Survey of Facilities for Determinations Regarding Licensure as Residential Child Care Facilities and Behavioral Health Centers

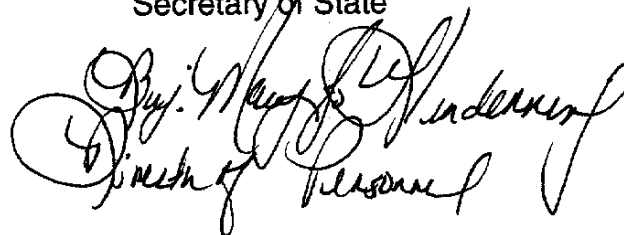
DATE FILED AS AN EMERGENCY RULE: March 9, 2001

DECISION NO. 1-01

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.

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE 3/16/01
ADMINISTRATIVE LAW DIVISION


JOE MANCHIN, III
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Deputy Secretary of State



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EMERGENCY RULE DECISION
(ERD 1-01)

AGENCY: Health & Human Resources
RULE: New Rule, 69CSR5, Survey of Facilities for Determinations Regarding Licensure as Residential Child Care Facilities and Behavioral Health Centers

FILED AS AN EMERGENCY RULE: March 9, 2001

- par. 1 The Department of Health & 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 March 9, 2001 and with the LRMRC March 9, 2001.

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 §49-2B-4 reads:

The commissioner shall promulgate rules in accordance with the provisions of §29A-1-1 et seq. of this code regarding the licensure, approval, certification and registration of child care facilities and the implementation of the provisions of this article.

par. 9 W. Va. Code further states in §27-9-1:

No hospital, center or institution, or part thereof, to provide inpatient, outpatient or other service designed to contribute to the care and treatment of the mentally ill or mentally retarded, or prevention of such disorders, shall be established, maintained or operated by any political subdivision or by any person, persons, association or corporation unless a license therefor shall be first obtained from the director of health. The application for such license shall be accompanied by a plan of the premises to be occupied, and such other data and facts as the director may require. He may make such terms and regulations in regard to the conduct of such hospital, center or institution, or part thereof, as he may thing proper and necessary. He may make such terms and regulations in regard to the conduct of such hospital center or institution, or part thereof, as he may thing proper and necessary. He, or any person authorized by him, shall have authority to investigate and inspect such hospital, center or institution, or part thereof; and the director of health may revoke the license of any such hospital, center or institution, or part thereof, for good cause after reasonable notice to the supertendent or other person in charge thereof.

par. 10 Further found in W. Va. Code §27-17-3:

(a) No group residential facility shall be established, maintained or operated unless a license therefor shall be first obtained from the director of health, except that a group residential facility for behaviorally disabled juveniles shall be deemed to satisfy all requirements of this section by obtaining a license from the commissioner of human services all requirements of this section by obtaining a license from the commissioner of human services. The application for such license shall contain such data and facts as the director may require. The director may promulgate reasonable regulations for the conduct of such facilities, including, but not limited to, a statement of the rights of patients in group residential facilities for the mentally and physically impaired to ensure the adequate care and supervision of such patients, and shall have the authority to investigate and inspect any such facility, and may revoke the license of any such facility for good cause after notice and hearing.

(b) A group residential home is not required to obtain a license from the director of health.

par. 11 It is the determination of the Secretary of State that the DHHR has not exceeded its statutory authority in promulgating this emergency rule.

par. 12 (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. 13 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. 14 The facts and circumstances as presented by the DHHR are as follows:

The West Virginia Department of Health and Human Resources is statutorily charged with the responsibility of ensuring the health, safety and well-being of children. A portion of this responsibility is devoted to the prevention of intentional or accidental harm to children in and out of home setting for an extended period of time. In these out of the home settings, DHHR is duty bound to license all programs that provide either residential child care or behavioral health services, or both. Through licensing, the Department is able to ensure that a particular program is safe, reliable and geared to the ages and needs of the children it serves, meets the basic health and safety standards, and employs staff who have the training and experience needed to interact with children.

Due to the recent death of a child and harm to another, in an unlicensed facility, the Department has become aware that there are numerous other facilities that may be similarly situated. DHHR needs to quickly determine which facilities are subject to licensure and which are not.

The emergency rule would require known facilities to provide answers as to their residential child care and behavioral health services. From the responses, the DHHR will be able to make determinations as to which facilities need inspections. The emergency rule will start the process that will result in some of these facilities being required to raise their standards so they can be licensed by DHHR for residential child care and/or behavioral health services. Undoubtedly, licensure of some of these facilities will result in the immediate preservation of the health safety and welfare of children, and the prevention of harm to children.

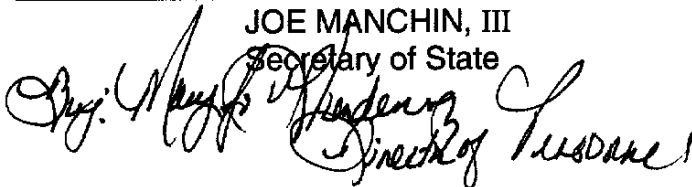
par. 15 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "health, safety and welfare" and "prevention of harm"

par. 16

This decision shall be cited as Emergency Rule Decision 1-01 or ERD 1-01 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Department of Health and Human Resources, the Attorney General and the Legislative Rule Making Review Committee.



JOE MANCHIN, III
Secretary of State



Entered _____

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THIS DATE 3/16/01
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