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SECRETARY OF STATE

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August 3, 2009

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Health Care Authority

RULE: New Rule, 65CSR27, Hospital Ambulatory Health Care Facilities

DATE FILED AS AN EMERGENCY RULE: July 15, 2009

DECISION NO. 12-09

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.

A handwritten signature in cursive script that reads "Natalie E. Tennant".

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 12-09)

AGENCY: Health Care Authority
RULE: New Rule, 65CSR27, Hospital Ambulatory Health Care Facilities
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- par. 1 The Health Care Authority (HCA) 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 HCA filed this emergency rule with supporting documents with the Secretary of State July 15, 2009 and with the LRMRC July 15, 2009.
- par. 7 It is the determination of the Secretary of State that the HCA 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 §16-2D-4(g) reads:

(g) The state agency shall promulgate emergency rules pursuant to the provision of chapter twenty-nine-a of this code by July 1, 2009, to establish an exemption process for such projects.
- par. 9 It is the determination of the Secretary of State that the HCA 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.

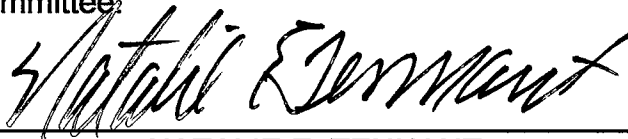
par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the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

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

The rule exempts hospitals from Certificate of Need (CON) review, under certain circumstances, for the construction, acquisition, or development of an ambulatory health care facility. This exemption was created by W.Va. Code §16-2D-4(e) and (f). The rule permits an exemption from Certificate of Need review for hospital ambulatory care facilities located in the same county as the hospital; that employ 5 or less physicians; that do not exceed the capital expenditure minimum; and for which no objections to the CON are filed by an affected person after proper notice is given by the Authority.

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 limit established by the Code.

par. 14 This decision shall be cited as Emergency Rule Decision 12-09 or ERD 12-09 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Health Care Authority, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

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