

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Board of Medicine TITLE NUMBER: 11

CITE AUTHORITY West Virginia Code §31B-13-1304

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

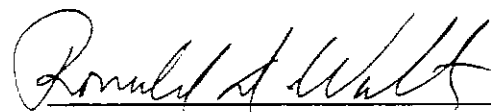
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 7

TITLE OF RULE BEING PROPOSED: Formation and Approval of Professional
Limited Liability Companies

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE
MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT
BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE
FILED WITH THE SECRETARY OF STATE.



TITLE II
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF MEDICINE

SERIES 7
FORMATION AND APPROVAL OF PROFESSIONAL
LIMITED LIABILITY COMPANIES

§11-7-1. General.

1.1. Scope. - This legislative rule addresses procedures for the formation and approval of professional limited liability companies for physicians and podiatrists.

1.2. Authority. - W. Va. Code §31B-13-1304.

1.3. Filing Date. -

1.4. Effective Date. -

§11-7-2. Definition.

2.1. Board. - The West Virginia Board of Medicine, established in W. Va. Code §30-3-5.

§11-7-3. Procedures for Formation and Approval of Professional Limited Liability Companies for Physicians and Podiatrists; Fees.

3.1. Physicians licensed to practice medicine and surgery in an active status in this State who desire to render medical professional services as a limited liability company shall comply with the provisions of West Virginia Code §31B-13-1 et seq. No professional limited liability company shall have as a member anyone other than a person who is duly licensed or otherwise legally authorized to render the professional services for which the professional limited liability company was organized.

3.2. Podiatrists licensed to practice podiatry in an active status in this State who desire to render podiatric professional services as a limited liability company shall comply with the provisions of West Virginia Code §31B-13-1 et seq. No professional limited liability company shall have as a member anyone other than a person who is duly licensed or otherwise legally authorized to render the professional services for which the professional limited liability company was organized.

3.3. The name of a professional limited liability company shall contain the words "professional limited liability company" or the abbreviation "P.L.L.C." or "Professional L.L.C."

3.4. Every professional limited liability company shall file with the Board at the time of formation, the names of its two or more members, and written documentation that the professional limited liability company carries at least one million dollars of

professional liability insurance, together with an initial filing fee of \$100. Thereafter, every professional limited liability company on an annual basis on or before the first day of July, shall file with the Board the names of its two or more members, and written documentation that the professional limited liability company carries at least one million dollars of professional limited liability insurance, together with an annual renewal fee of \$100.

3.4.a. The requirement under West Virginia Code §31B-13-1305 that a professional limited liability company carry one million dollars of professional liability insurance is satisfied if the professional limited liability company provides one million dollars of funds specifically designated and segregated for the satisfaction of judgements against the company members or any of its professional or nonprofessional managers or employees arising out of the performance of professional services to patients or clients of the company, by:

(1) Deposit in trust or in bank escrow of cash, bank certificates of deposit or United States treasury obligation; or

(2) A bank letter of credit or insurance company bond.

3.5. Every limited liability company formed prior to the effective date of this rule whose members are physicians or podiatrists licensed under the provisions of West Virginia Code §30-3-1 et seq. shall re-form the company and re-file articles of organization pursuant to the provisions of West Virginia Code §31B-13-1 et seq. and provisions of this rule.

3.6. Every professional limited liability company shall file with the Board a copy of the annual report required to be filed with the secretary of state under West Virginia Code §31B-2-211. The copy of the annual report, and a copy of any corrected annual report filed with the secretary of state, shall be filed with the Board on or before the first day of July on an annual basis.

3.7. The Board shall approve every professional limited liability company in compliance with all the provisions of this rule, and every professional limited liability company remaining in compliance with this rule shall remain approved by the Board.

3.8. If any person ceases to be a member of any professional limited liability company, that person shall so notify the Board in writing within twenty days from the day that the person ceases to be a member of the professional limited liability company. The fact that a person ceases to be a member of a professional limited liability company shall not affect the approval of the professional limited liability company by the Board, provided that the Board determines that the professional limited liability company remains in compliance with all the provisions of this rule.

§11-7-4. Notification of Non-compliance, Cessation of Rendering Professional Services.

3.9. If the Board determines that a professional limited liability company is not in compliance with all the provisions of this rule and should cease rendering professional services in the State, the Board shall notify the professional limited liability company in writing of its noncompliance and shall order the professional limited liability company to stop rendering professional services. Upon receipt of the written notice, the professional limited liability company shall cease rendering professional services in this State.

§11-7-5. Physician-Patient and Podiatrist-Patient Relationship.

3.10. The provisions of this rule shall not be construed to alter or affect the physician-patient or podiatrist-patient relationship.



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

FILED

FEB 19 9 31 AM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Senator: Mike Ross, Co-Chairman
Delegate: Mark Hunt, Co-Chairman
Counsel: Debra A. Graham

February 11, 1997

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Audrey R. Ross, Admin. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Ms. Deborah Rodecker
West Virginia Board of Medicine
101 Dee Drive
Charleston, WV 25311

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: *Formation and Approval of Professional Limited Liability Companies* // - 7

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. _____

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Board of Medicine

Subject: Formation and Approval of Professional Limited Liability Companies, 11CSR7

PERTINENT DATES

Filed for public comment: July 19, 1996
Public comment period ended: August 23, 1996
Filed following public comment period: September 9, 1996
Filed LRMRC: September 9, 1996
Filed as emergency: August 5, 1996

Fiscal Impact: None

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 defines terms.

Section 3 provides that physicians and podiatrists who desire to render professional services as a limited liability company shall comply with the statute and that no professional limited liability company may have as a member a person who is not duly licensed in that profession. It also requires that the name of the professional limited liability company contain the words "professional limited liability company" or "P.L.L.C." or "Professional L.L.C."

This section also requires that certain information be filed with the Board of Medicine when the company is formed, including documentation that the company carries at least one million dollars in liability insurance. It sets an initial filing fee of \$100 and an annual renewal fee of \$100. This section specifies the methods by which the requirement for liability insurance may be met.

It requires limited liability companies formed prior to the effective date of this rule to re-form the company and to re-file their articles of incorporation with the Secretary of State. Every company is required to file a copy of its annual report with the Secretary of State and the Board.

A company is to notify the Board within 20 days of when a person ceases to be a member of

the company.

Section 4 requires the Board to notify a professional limited liability company if it determines that the company is not in compliance with the provisions of this rule and should cease rendering services. Upon receipt of the notice, the professional limited liability company is to cease rendering professional services.

Section 5 states that the provisions of this rule shall not be construed to alter or affect the physician-patient or podiatrist-patient relationship.

AUTHORITY

Statutory authority: W.Va. Code, §31C-13-1304, which provides, as follows:

The licensing board for each of the professions authorized to form professional limited liability companies under this article shall propose legislative rules for promulgation, in accordance with the provisions of article three, chapter twenty-nine-a of this code, providing for the implementation of this article and the procedures for the formation and approval of professional limited liability companies for the particular profession under the jurisdiction of such licensing board.

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?

No.

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 PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.

Senate Bill No. 194

(By Senator(s) Ross, Anderson, Macnaughtan,
Boley and Buckalew)

[Introduced March 3, 1997; referred to the
Committee on the Judiciary.]

A BILL to amend article nine, chapter sixty-four of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, by adding thereto a new
section, designated section eight, relating to
authorizing the board of medicine to promulgate a
legislative rule relating to the formation and
approval of professional limited liability companies.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter sixty-four of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, be amended by adding thereto a new section,
designated section eight, to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND
BOARDS TO PROMULGATE LEGISLATIVE RULES.

1 §64-9-8. Board of medicine.

2 The legislative rule filed in the state register on
3 the ninth day of September, one thousand nine hundred
4 ninety-six, under the authority of section one thousand
5 three hundred and four, article thirteen, chapter thirty-
6 one-c, of this code, modified by the board of medicine to
7 meet the objections of the legislative rule-making review
8 committee and refiled in the state register on the
9 thirteenth day of February, one thousand nine hundred
10 ninety-seven, relating to the board of medicine (formation
11 and approval of professional limited liability companies,
12 11 CSR 7), is authorized.

13

14 NOTE: The purpose of this bill is to authorize the
15 Board of Medicine to promulgate a legislative rule relating
16 to the Formation and Approval of Professional Limited
17 Liability Companies.

18

19 This section is new; therefore, strike-throughs and
20 underscoring have been omitted.

6558

H. B. 2357

1 Bill-Medicine, Form (By Delegate(s) Douglas, Hunt, Compton,
2 Faircloth, Lynch and Riggs)

3
4 [Introduced March 3, 1997; referred to the
5 Committee on the Judiciary.]
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8
9

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