

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY: _____

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES X, NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 24

TITLE OF RULE BEING AMENDED: Transitional Requirements for the Con-
version of Medicare Supplement Insurance Benefits and Premiums to
Conform to Medicare Program Revisions

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: _____

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____
Requirements for Medicare Supplement Insurance Benefits and Premiums to
Conform to Medicare Program Revisions

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

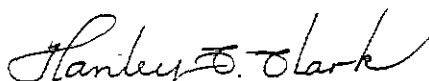
THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The Insurance Commissioner regulates insurance policies sold to supplement benefits provided under the federal medicare program. The benefit and premium levels of medicare supplement insurance policies are thus contingent upon and coordinated with benefits provided by the medicare program.

In 1988, Congress passed and President Reagan signed into law the Medicare Catastrophic Coverage Act (MCCA). This Act significantly alters the benefits provided by Medicare, effective January 1, 1989. As a consequence, standards for medicare supplement insurance policies must be altered to correspond with the new medicare benefit schedule. Transitional regulations were previously filed September 20, 1988 to meet this need on a temporary basis. The current regulation will supercede the transitional regulation and be a permanent regulation. Both these steps are mandated by MCCA.

This regulation is promulgated on an emergency basis pursuant to West Virginia Code §29A-3-15(g) due to a mandatory September 20, 1989 time limitation established by MCCA.

Use Additional Sheets If Necessary.


Hanley C. Clark
Insurance Commissioner

KEN HECHLER
Secretary of State

MARY P. RATLIFF
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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(Plus all the volunteer
help we can get)

September 14, 1989

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

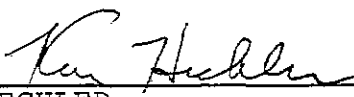
AGENCY: Insurance Commissioner

RULE: Amendment to Series 24; Transitional Requirements for the Conversion of Medicare Supplement Insurance Benefits and Premiums to Conform to Medicare Program Revisions Requirements for Medicare Supplement Insurance Benefits and Premiums to Conform to Medicare Program Revisions

DATE FILED AS AN EMERGENCY RULE: August 14, 1989

DECISION NO. 20-89

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.


KEN HECHLER
Secretary of State

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SECRETARY OF STATE

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DECISION

EMERGENCY RULE DECISION
(ERD 20-89)

AGENCY: Insurance Commissioner

RULE: Amendment to Series 24, Transitional Requirements for the Conversion of Medicare Supplement Insurance Benefits and Premiums to Conform to Medicare Program Revisions Requirements for Medicare Supplement Insurance Benefits and Premiums to Conform to Medicare Program Revisions

FILED AS AN EMERGENCY RULE: August 14, 1989

- par. 1 The Insurance Commissioner has filed the above emergency amendments to Series 24.
- par. 2 West Virginia 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(a)].
- par. 4 (A) Procedural Compliance: WV 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 ERD 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 Insurance Commissioner has filed this emergency rule with supporting documents with the Secretary of State on August 14, 1989, and with the LRMRC on August 14, 1989.

par. 7 It is the determination of the Secretary of State that the Insurance Commissioner has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §33-28-5(a) (b) reads:

§33-28-5. *Minimum standards for benefits.*

(a) The commissioner shall promulgate rules and regulations, in accordance with chapter twenty-nine-a (§29A-1-1 et seq.) of the Code, to establish minimum standards for benefits under each of the following categories of coverage in individual policies of accident and sickness insurance and subscriber contracts of hospital, medical, dental and service corporations:

- (1) Basic hospital expense coverage;*
- (2) Basic medical-surgical expense coverage;*
- (3) Hospital confinement indemnity coverage;*
- (4) Major medical expense coverage;*
- (5) Disability income protection coverage;*
- (6) Accident only coverage; and*
- (7) Specified disease or specified accident coverage.*

(b) Nothing in this section shall preclude the issuance of any policy or subscriber contract which combines two or more of the categories of coverage enumerated in subdivisions (1) through (6) of subsection (a) of this section.

par. 10 §33-2-10 of the WV Code also reads:

§33-2-10. *Rules and regulations.*

The commissioner is authorized to promulgate and adopt such rules and regulations relating to insurance as are necessary to discharge his duties and exercise his powers and effectuate the provisions of this chapter and to protect and safeguard the interests of policyholders and the public of this State.

par. 11 WV Code further reads in 33-16-3d:

(b) Standards for policy revisions. -- (1) The commissioner shall issue reasonable regulations to establish specific standards for policy provisions of medicare supplement policies. Such standards shall be in addition to and in accordance with the applicable laws of this State and may cover, but shall not be limited to:

- (A) Terms of renewability;*
- (B) Initial and subsequent conditions of eligibility;*
- (C) Nonduplication of coverage;*
- (D) Probationary period;*
- (E) Benefit limitations; exceptions and reductions;*
- (F) Elimination period;*
- (G) Requirements for replacement;*
- (H) Recurrent conditions; and*
- (I) Definitions of terms.*

(2) The commissioner may issue reasonable regulations that specify prohibited policy provisions not otherwise specifically authorized by statute which in the opinion of the commissioner, are unjust, unfair or unfairly discriminatory to any person insured or proposed for coverage under a medicare supplement policy.

(c) Minimum standards for benefits. -- The commissioner shall issue reasonable regulations to establish minimum standards for benefits under medicare supplement policies.

(e)(3) The commissioner may prescribe by regulation a standard form and the contents of an informational brochure for persons eligible for medicare by reasons of age, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare.

(4) The commissioner may further promulgate reasonable regulations to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies, subscriber contracts or certificates by persons eligible for medicare by reason of age.

(g) Administrative procedures. -- Regulations promulgated pursuant to this section shall be subject to the provisions of chapter twenty-nine-a (§29A-1-1 et seq.) (West Virginia Administrative Procedures Act.)

par. 12 WV Code states in §5F-2-1(f)(8):

(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of tax and revenue:

(8) Agency of insurance commissioner provided for in article two (§33-2-1 et seq.), chapter thirty-three of this code.

par. 13 §5F-2-2(a)(11) further states:

(11) Promulgate rules, as defined in section two, article one, chapter twenty-nine-a of this code, to implement and make effective the powers, authority and duties granted and imposed by the provisions of this chapter, such promulgation to be in accordance with the provisions of chapter twenty-nine-a of this code.

par. 14 It is the determination of the Secretary of State that the Insurance Commissioner has not exceeded its statutory authority in promulgating this emergency rule.

par. 15 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

(g) 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. 16 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. 17 The facts and circumstances as presented by the Insurance Commissioner are as follows:

The Insurance Commissioner regulates insurance policies sold to supplement benefits provided under the federal medicare program. The benefit and premium levels of medicare supplement insurance policies are thus contingent upon and coordinated with benefits provided by the medicare program.

In 1988, Congress passed and President Reagan signed into law the Medicare Catastrophic Coverage Act (MCCA), This Act significantly alters the benefits provided by Medicare, effective January 1, 1989. As a consequence, standards for medicare supplement insurance policies must be altered to correspond with the new medicare benefit schedule. Transitional regulations were previously filed September 20, 1988 to meet this need on a temporary basis. The current regulation will supercede the transitional regulation and be a permanent regulation. Both these steps are mandated by MCCA.

This regulation is promulgated on a emergency basis pursuant to West Virginia Code §29A-3-15(g) due to a mandatory September 20, 1989 time limitation established by MCCA.

par. 18 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency.

par. 19 This decision shall be cited as Emergency Rule Decision 20-89 or ERD 20-89 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Insurance Commissioner, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

Entered _____

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