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WEST VIRGINIA LEGISLATURE  
Legislative Rule-Making Review Committee

2002 OCT 24 A 9:32

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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October 23, 2002

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Mary Jane Pickens  
Insurance Commissioner  
Capitol Complex  
Box 50540

FROM: Legislative Rule-Making Review Committee

Proposed Rule: AIDS Regulations, 114CSR27

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.
- 5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Insurance Commission

Subject: AIDS Regulations, 114 CSR 27

Date: October 1, 2002

Staff Counsel: Connie A. Bowling

OFFICE OF THE  
SECRETARY OF STATE

2002 OCT -3 A 9:46

FILED

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PERTINENT DATES

Filed for public comment: May 29, 2002

Public comment period ended: July 1, 2002

Filed following public comment period: July 26, 2002

Filed LRMRC: July 26, 2002

Filed as emergency: N/A

Fiscal Impact: None

ABSTRACT

This rule amends an existing rule setting out guidelines insurers must follow with regard to HIV in underwriting for accident & sickness policies. Among other things the rule prohibits questions about sexual preference or life style, and limits HIV testing for group insurance policies.

The amendment deletes restrictions on the use of urine specimens to test for HIV. The Commissioner asserts that medical technology has advanced to the point that urine tests have been approved by the FDA, are now highly accurate and are less intrusive than blood or oral tests. Adoption of the amendment would bring WV in line with the other 49 states that allow the use of urine specimens for HIV tests.

The current rule contains a statement on the notice and consent for testing form that a positive HIV test or discovery of "other significant blood abnormalities" will have a adverse affect on the insurance application. The amended rule deletes the word

"blood", expanding the notice to include any abnormalities shown as a result of the testing.

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**AUTHORITY**

Statutory authority:

W. Va. Code § 33-2-10:

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 to effectuate the provisions of this chapter and to protect and safeguard the interests of policyholders and the public of this State.

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**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.

The amended rule appears to remove the last reference to the OMT test. In light of this, Counsel questions whether it is necessary to have a definition of OMT in the rule.