

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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FILED
1990 AUG -1 PM 3:54
WEST VIRGINIA SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY: West Virginia Code §§33-16-3f, 33-2-10, 33-6-8, 33-6-9, 33-23-24, 33-24-6, 33-25-11, 33-25A-3(1), and 33-25A-20
EMERGENCY 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 RULE BEING FILED AS AN EMERGENCY: Series 29

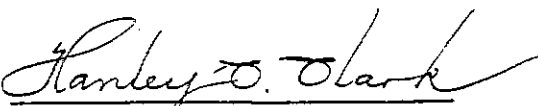
TITLE OF RULE BEING FILED AS AN EMERGENCY: Health Insurance Benefits
For Temporomandibular and Craniomandibular Disorders

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:

SEE ATTACHED

Use Additional Sheets If Necessary.


Hanley C. Clark
Insurance Commissioner

STATE OF WEST VIRGINIA



GASTON CAPERTON
GOVERNOR

HANLEY C. CLARK
INSURANCE COMMISSIONER

OFFICES OF THE
INSURANCE COMMISSIONER
2019 WASHINGTON STREET, EAST
CHARLESTON, WEST VIRGINIA 25305

LEGAL DIVISION
304) 348-0401

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CONSENT TO PROPOSAL OF RULE

FILED
MAY 24 1990
STATE OF WEST VIRGINIA

To Whom It May Concern:

Pursuant to West Virginia Code §5F-2-2(a) (12), the undersigned hereby grants consent to the proposal of the following rule proposed by the Insurance Commissioner of the State of West Virginia: Title 33, Series 29, relating to Health Insurance Benefits for Temporomandibular and Craniomandibular Disorders.

Signed this 24th day of May, 1990.

A handwritten signature in cursive script, reading "Charles O. Lorensen".

Charles O. Lorensen
Secretary of Tax and Revenue

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Senate Bill number 252 was passed April 8, 1989 and became effective July 1, 1989. This bill dictated that the West Virginia Insurance Commissioner promulgate the attached regulations as to insurance coverage of Temporomandibular Joint Disorder (TMJ) and Craniomandibular Disorders (CMD). Senate Bill number 252 further dictated that such regulations should be developed by the Insurance Commissioner in conjunction with a six (6) member panel made up of representatives of various groups in the medical and insurance fields. This process was meticulously followed and it has took eleven (11) months for the committee and the Commissioner to work through the extremely complex TMJ and CMD issue, thereby fulfilling the charge of Senate Bill number 252. It has taken an additional two (2) months for the insurance industry to make the necessary form changes and other preparatory measures to fulfill the requirements of this regulation. The promulgation of this regulation on an emergency basis is, therefore, necessary in order to fulfill the legislative intent of Senate Bill 252; to prevent substantial public harm; and to comply, as nearly as possible, with the time limitations set by West Virginia Code §29A-3-13.

FISCAL NOTE FOR PROPOSED RULES

FILED
1983 AUG -1 PM 3:54
OFFICE OF THE CLERK
WEST VIRGINIA

Rule Title: Health Insurance Benefits for Temporomandibular and Cranio-mandibular Disorders

Type of Rule: X Legislative Interpretive Procedural

Agency: Insurance Commissioner Address: 2019 Washington Street, East,
 Charleston, West Virginia 25305

1. Effect of Proposed Rule	ANNUAL		Current	FISCAL YEAR	
	Increase	Decrease		Next	Thereafter
Estimated Total Cost			NONE		
Personal Services					
Current Expense					
Repairs & Alterations			NONE		
Equipment					
Other					

2. Explanation of above estimates:

There will be no fiscal impact on state, local or federal government.

3. Objectives of these rules:

To set out requirements as to insurance coverage of the diagnosis and treatment of TMJ and the manner in which such coverage must be offered, and also to provide for appropriately adjusted premiums due to such coverage. At present TMJ is a very ill-defined medical condition. These regulations will clarify what conditions and treatments are to be included under insurance coverage and that such coverage must be offered to insureds.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

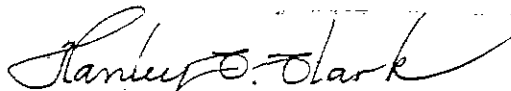
The effect on the insurance industry should be negligible since premiums are tied to losses paid and these regulations permit such adjustments. As to insureds the coverage of TMJ is optional and so acceptance of higher premiums will be optional.

C. Economic Impact on Citizens/Public at Large.

NONE

Date: August 1, 1990

Signature of Agency Head or Authorized Representative



Stanley C. Clark
Insurance Commissioner

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: OFFICE OF THE INSURANCE COMMISSIONER
DATE: August 1, 1990

FILED

1990 AUG -1 PM 3: 54

OFFICE OF THE INSURANCE COMMISSIONER
STATE OF WEST VIRGINIA

EMERGENCY RULE TITLE: Health Insurance Benefits For
Temporomandibular and Craniomandibular Disorders

1. Date of filing: August 1, 1990
2. Statutory authority for promulgating the emergency rule:
West Virginia Code §§33-16-3f, 33-2-10, 33-6-8, 33-6-9, 33-23-24, 33-24-6, 33-25-11, 33-25A-3(1), and 33-25A-20.
3. Date of filing of proposed legislative rule: August 1, 1990
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
Completely new language
5. Has the same or similar emergency rule previously been filed and expired?
No. The same emergency rule was, however, previously filed and withdrawn so as to give the insurance industry adequate time to adjust.
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.
TMJ is a very painful and potentially debilitating malady. Treatment can be very expensive. Presently, many insurance companies exclude coverage completely or deny coverage when a claim is filed. This leaves many insureds with large medical bills when they may have thought they had coverage. Others may not seek treatment because their insurance will not cover TMJ. This problem is also causing great furor with medical providers and insurance companies alike. These regulations should alleviate these problems.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

West Virginia Code §33-16-3f in conjunction with §29A-3-13.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

TMJ is a very hot issue both politically and in the medico/insurance field. The legislative interest in enacting West Virginia Code §33-16-3f was to provide a timely solution to this issue. TMJ treatment can cost as much as \$20,000 - \$30,000. Putting such mandatory coverage into effect now, as opposed to a year from now, will provide coverage to many people who might otherwise face extreme financial hardship. This was in essence the legislative mandate of West Virginia Code §33-16-3f.

STATE OF WEST VIRGINIA



GASTON CAPERTON
GOVERNOR

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INSURANCE COMMISSIONER
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LEGAL DIVISION
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(304) 348-0412

HANLEY C. CLARK
INSURANCE COMMISSIONER

August 1, 1990

HAND DELIVERED

Ms Judy Cooper
Office of Secretary of State
State Capitol
Charleston, WV 25305

Dear Ms Cooper:

Enclosed please find for filing the "Notice of an Emergency Rule," "Notice of a Comment Period on a Proposed Rule," "Consent to Proposal of Rule" and a copy of the proposed rule "Health Insurance Benefits for Temporomandibular and Craniomandibular Disorders" for Series 29, Title 114.

Sincerely,

B. Keith Huffman
B. Keith Huffman
General Counsel

BKH/iw
Enclosures

FILED
AUG - 1 PM 3:55
OFFICE OF THE SECRETARY OF STATE
STATE CAPITOL
CHARLESTON, WV

EMERGENCY

WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

CHAPTER 33-16
SERIES 29

HEALTH INSURANCE BENEFITS FOR TEMPOROMANDIBULAR
AND CRANIOMANDIBULAR DISORDERS

- Section 1. General
- Section 2. Applicability
- Section 3. Definitions
- Section 4. Mandatory Coverage
- Section 5. Procedures Covered
- Section 6. Rate and Form Filings
- Section 7. Separability

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EMERGENCY

WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

CHAPTER 33-16
SERIES 29

HEALTH INSURANCE BENEFITS FOR TEMPOROMANDIBULAR
AND CRANIOMANDIBULAR DISORDERS

Section 1. General

1.1 Scope - This legislative rule establishes requirements and standards for accident and sickness insurance coverage of temporomandibular disorder (TMD) and craniomandibular disorder (CMD).

1.2 Authority - West Virginia Code §§ 33-2-10, 33-6-8, 33-6-9, 33-23-24, 33-24-6, 33-25-11, 33-25A-3(1), 33-25A-20, and 33-16-3f(b).

1.3 Filing Date -

1.4 Effective Date -

Section 2. Applicability

2.1 Insurers - All insurers who deliver or issue for delivery in this state any policies for accident and sickness insurance are subject to this rule.

2.2 Service Corporations - All health service corporations who deliver or issue for delivery in this state any subscriber's contracts for accident and sickness insurance are subject to this rule.

2.3 Health Care Corporations - All health care corporations who deliver or who issue for delivery to enrollees in this state evidence of accident and sickness insurance coverage are subject to this rule.

2.4 Fraternal Benefit Societies:

(A) All fraternal benefit societies who deliver or issue for delivery accident and sickness insurance benefit certificates, or other evidence of coverage in this state are subject to this rule.

(B) All domestic, foreign, or alien societies who issue any certificate or other evidence of any contract of accident or sickness insurance in this state are subject to this rule.

Insurance Commissioner
Leg. Rule 33-16
Series 29, Sec. 4
EMERGENCY

2.5 Health Maintenance Organizations - All health maintenance organizations who deliver or offer for delivery in this state any evidence of accident and sickness coverage are subject to this rule.

Section 3. Definitions

3.1 Temporomandibular Disorder(s) (TMD) - means a group of musculoskeletal conditions, often overlapping, that involve the temporomandibular joint (TMJ) or joints, the masticatory musculature, or both. These conditions are typically characterized by pain in the preauricular area which is usually aggravated by chewing or jaw function, and are frequently accompanied, either singly or in combination, by limitation of jaw movement, joint sounds, palpable muscle tenderness or joint soreness. Although pain and dysfunction in the orofacial or craniofacial regions have multiple sources and etiologies that may coexist with temporomandibular disorders or show signs similar to those of temporomandibular disorders; temporomandibular disorders are limited to pain and dysfunction arising in and from the masticatory musculoskeletal system.

3.2 Craniomandibular Disorders(s) (CMD) - means problems of the stomatognathic system and include disorders of the temporomandibular joint, muscles of mastication and the related occlusion.

3.3 Commissioner - means the West Virginia Insurance Commissioner.

3.4 PEIA - means the West Virginia Public Employees Insurance Agency.

Section 4. Mandatory Coverage

4.1 All accident and sickness coverage which provides hospital, surgical, or major medical coverage or any combination of those coverages and which is offered by any of the entities set out in Section 2. of this rule shall provide benefits for the diagnosis and treatment of temporomandibular disorders (TMD) and craniomandibular disorders (CMD). This applies to both renewed coverage and new coverage. This requirement shall not apply to insurance policies or other forms of coverage which provide benefits only for specific illnesses such as "cancer policies" or "intensive care policies."

(A) An insured shall be given the option of declining coverage for temporomandibular disorders (TMD) and

Insurance Commissioner
Leg. Rule 33-16
Series 29, Sec. 5
EMERGENCY

craniomandibular disorders (CMD) and the insurer must provide an appropriate waiver form or incorporate such waiver form into the insurance policy or other evidence of coverage.

(1) Such waiver form must clearly indicate that the prospective insured understands that coverage is available for temporomandibular disorders (TMD) and craniomandibular disorders (CMD), but that the insured does not desire such coverage; all of which shall be witnessed by the signature of the insured and the date signed.

(2) Such waiver form shall be subject to the prior approval of the Commissioner.

4.2 If a waiver, as described in subsection 4.1(A) above, is not properly executed, coverage for temporomandibular disorders (TMD) and craniomandibular disorders (CMD) will remain as a part of the policy or other evidence of coverage.

4.3 For purposes of this rule, the PEIA is the policyholder and not an insurer. If the PEIA elects to purchase accident and sickness coverage for its participants from an insurer, then such insurer must offer to the PEIA the option of purchasing benefits for temporomandibular disorders (TMD) and craniomandibular disorders (CMD) in compliance with this rule.

Section 5. Procedures Covered

5.1 The insurance coverage required by this rule shall at a minimum include benefits for the following procedures:

(A) Health history (medical and/or dental) pertinent to symptoms;

(B) Clinical examination related to the presenting symptoms;

(C) Imaging procedures; provided radiographs must be diagnostic for temporomandibular disorders (TMD) and/or craniomandibular disorders (CMD);

(D) Conventional diagnostic and therapeutic injections;

(E) Temporary orthotics; provided that splints or appliances may be limited to one every three years, and that all adjustments to the appliance performed during the first six months of its installation are considered part of the total

Insurance Commissioner
Leg. Rule 33-16
Series 29, Sec. 6
EMERGENCY

appliance fee. Those appliances designed for orthodontic purposes such as bionators, functional regulators, Frankel devices, and similar devices are not covered;

(F) Physical medicine and physiotherapy which shall include:

- (1) Ultrasound
- (2) Diathermy
- (3) High Voltage Galvanic Stimulation
- (4) Transcutaneous Nerve Stimulation;

(G) Surgery on the Temporomandibular Joint which includes, but is not limited to arthotomy and diagnostic arthroscopy.

5.2 Insurance Coverage for the diagnosis and treatment of temporomandibular disorders (TMD) and craniomandibular disorders (CMD) as required by this rule shall be provided without regard to whether such diagnosis and treatment is provided by a doctor, dentist, or other health care professional so long as such provider is permitted by their professional license to perform such procedures. No distinction may be made as to whether such diagnosis and treatment is for a medical or a dental condition.

Section 6. Rate and Form Filings

6.1 Entities subject to this rule shall file with the Commissioner such amended or new contractual or other forms as are necessary to accomplish the requirement of this rule by August 1, 1990, and may file appropriately adjusted premium rates consistent with any increased or decreased risk associated with the coverage of temporomandibular disorders (TMD) and craniomandibular disorders (CMD).

(A) Premiums shall be so structured so as to provide appropriate premiums as to both insureds who retain coverage for temporomandibular disorders (TMD) and craniomandibular disorders (CMD) and those insureds who exercise their option to waive such coverage.

(B) All premium rates and forms filed due to this rule shall be filed in accordance with West Virginia Insurance Commissioner Administrative Regulations, Series 26 - Accident and Sickness Rate Filing, and shall be subject to the prior approval of the Commissioner before they become effective. This

Insurance Commissioner
Leg. Rule 33-16
Series 29, Sec. 7
EMERGENCY

section shall not apply to group accident and health insurance plans upon which premiums are negotiated with the individual policyholder and are based on the historic and projected loss experience of the group to be insured.

Section 7. Separability

7.1 If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application thereof to other persons or circumstances shall not be affected thereby.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

August 14, 1990

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug. 14, 1990
ADMINISTRATIVE LAW DIVISION

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Insurance Commissioner

RULE: New Rule, Series 29, Health Insurance Benefits for Tempor-
pormandibular and Craniomandibular Disorders

DATE FILED AS AN EMERGENCY RULE: August 1, 1990

DECISION NO. 35-90

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.

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER
Secretary of State

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

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(Plus all the volunteer
help we can get)

DECISION EMERGENCY RULE DECISION (ERD 35-90)

AGENCY: Insurance Commissioner
RULE: New Rule, Series 29, Health Insurance Benefits for
Tempormandibular and Craniomandibular Disorders
FILED AS AN EMERGENCY RULE: August 1, 1990

- par. 1 The Insurance Commissioner (Commissioner) has filed the above new rule as an emergency.
- 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 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 Commissioner filed this emergency rule with supporting documents with the Secretary of State on August 1, 1990 and with the LRMRC on August 1, 1990.

par. 7 It is the determination of the Secretary of State that the 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 §33-16-3f reads in part:

(b) The insurance commissioner shall promulgate rules and regulations regarding the diagnosis and treatment for temporomandibular joint disorder and craniomandibular disorder coverage in accident and sickness policies covered by this article and article fifteen of this chapter. Such regulations shall prescribe the manner by which such coverage shall be offered to the policyholder or sponsor; that benefits shall apply whether administered by a physician or dentist, and findings regarding the projected actuarial costs of implementing said regulations.

par. 9 It is the determination of the Secretary of State that the Commissioner has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (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. 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.

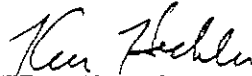
par. 12 The facts and circumstances as presented by the ABCC are as follows:

SB 252 was passed April 8, 1989 and became effective July 1, 1989. This bill dictated that the West Virginia Insurance Commissioner promulgate the attached regulations as to insurance coverage of Temporomandibular Joint Disorder (TMJ) and Craniomandibular Disorders (CMD). SB 252 further dictated that such regulations should be developed by the Insurance Commissioner in conjunction with a six member panel made up of representatives of various groups in the medical and insurance fields. This process was meticulously followed and it has taken 11 months for the committee and the Commissioner to work through the extremely complex TMJ and CMD issue, thereby fulfilling the charge of SB 252. It has taken an additional 2 months for the insurance industry to make the necessary form changes and other preparatory measures to fulfill the requirements of this regulation. The promulgation of this regulation on an emergency basis is, therefore, necessary in

order to fulfill the legislative intent of SB 252; to prevent substantial public harm; and to comply, as nearly as possible, with the time limitations set by WV Code §29A-3-13.

par. 13 . It is the determination of the Secretary of State that this proposal qualifies under the definition of emergency for the "immediate preservation of public peace, health, safety or welfare"; "time limitation" and to "prevent substantial harm to public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 35-90 or ERD 35-90 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Insurance Commissioner, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE Aug. 14, 1990
ADMINISTRATIVE LAW DIVISION

Entered _____