

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Dec 3, 1990
ADMINISTRATIVE LAW DIVISION

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY W.Va. 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

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

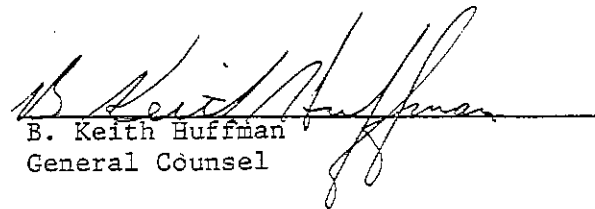
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 29

TITLE OF RULE BEING PROPOSED: Health Insurance Benefits for
Temporomandibular and Craniomandibular Disorders

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


B. Keith Huffman
General Counsel

STATE OF WEST VIRGINIA



FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Dec 3, 1990
ADMINISTRATIVE LAW DIVISION

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

FACSIMILE
(304) 348-0412

December 3, 1990

HAND DELIVERED

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

Re: Health Insurance Benefits for Temporomandibular and
Craniomandibular Disorders Regulation (Series 29)

Dear Ms Cooper:

Enclosed please find for filing the "Notice of Agency
Approval of a Proposed Rule and Filing with the Legislative
Rule-Making Review Committee," "Description of Rule,"
"Legislative Rule-Making Review Committee Questionnaire," and a
copy of the proposed rule "Health Insurance Benefits for
Temporomandibular and Craniomandibular Disorders" for Series 29,
Title 114.

Sincerely,

A handwritten signature in cursive script that reads "B. Keith Huffman".

B. Keith Huffman
General Counsel

BKH/iw
Enclosures

DATE: December 3, 1990

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: OFFICE OF THE INSURANCE COMMISSIONER

LEGISLATIVE RULE TITLE: Health Insurance Benefits for
Temporomandibular and Craniomandibular Disorders
(Series 29)

1. Authorizing statute(s) citation 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
2. a. Date filed in State Register with Notice of Hearing:
August 1, 1990
- b. What other notice, including advertising, did you give
of the hearing?
None
- c. Date of hearing(s): The public comment period ended
on September 4, 1990 at 4:30 p.m.
- d. Attach list of persons who appeared at hearing,
comments received, amendments, reasons for amendments.
Attached X No comments received _____
- e. Date you filed in State Register the agency approved
proposed Legislative Rule following public hearing:
(be exact)
December 3, 1990
- f. Name and phone number of agency person to contact for
additional information:
B. Keith Huffman
General Counsel
(304) 348-0401

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Not applicable

b. Date of hearing: Not applicable

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

Not applicable

d. Attach findings and determinations and reasons:

Attached Not applicable

DATE: December 3, 1990

TO: LÉGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: OFFICE OF THE INSURANCE COMMISSIONER

LEGISLATIVE RULE TITLE: Health Insurance Benefits for
Temporomandibular and Craniomandibular Disorders
(Series 29)

DESCRIPTION OF RULE

This rule requires a mandatory offering of insurance coverage for the diagnosis of and certain treatments for temporomandibular joint disorder (TMJ), craniomandibular joint disorder (CMD), and temporomandibular disorder. The Insurance Commissioner promulgated this rule pursuant to the mandate of S.B. 252 [codified as West Virginia Code §33-16-3f], which was passed by the 1989 General Session of the Legislature and which took effect July 1, 1989. This legislation required the Insurance Commissioner to determine health insurance coverage for the aforementioned disorders, by acting in conjunction with a six-member panel of medical and insurance experts nominated by special interest groups in both fields.

ATTACHMENT TO QUESTION 2(d):

Comments concerning the proposed rule were received from the following: Aetna Life Insurance and Annuity Company; Phoenix Mutual Life Insurance Company; and Pacific Mutual Life Insurance Company and PM Group Life Insurance Company.

After reviewing the comments, the Department determined to make only one amendment to its proposed rule. Phoenix Mutual Life Insurance Company's comment addressed Section 4.1(A) of the proposed rule, which requires that "[a]n insured shall be given the option of declining coverage for temporomandibular disorders (TMD) and craniomandibular disorders (CMD). . . ." The Phoenix suggested that the term "insured" as used in the above-quoted section should be clarified. The Insurance Commissioner agrees and has added new Section 4.4 to the agency-approved rule. This new subsection specifies that for purposes of this rule, the owner or sponsor of a group insurance policy shall be deemed to be the insured and shall have the option of purchasing benefits for temporomandibular disorders (TMD) and craniomandibular disorders (CMD) in compliance with this rule.

The comment received from Aetna Life Insurance and Annuity Company suggested deletion of the requirement, for individual insurance only, that the insurer must offer coverage that the insured can refuse regarding benefits for temporomandibular disorders (TMD) and craniomandibular disorders (CMD). However, West Virginia Code §33-16-3f, the statute authorizing the Insurance Commissioner to promulgate this proposed rule, requires that affected insuring entities make available coverage

for TMD and CMD to prospective policyholders or sponsors of accident and sickness policies.

Pacific Mutual Life Insurance Company and PM Group Life Insurance Company suggested in their comment that the deadline for affected insurers to file necessary contracts and other forms with the Insurance Commissioner should be delayed beyond the August 1, 1990 date set forth in Section 6.1 of the proposed rule. However, no other insurer registered a similar complaint about this form filing deadline. Furthermore, insurance companies affected by this rule had several months' advance notice of the rule's requirements. This came about because the Insurance Commissioner voluntarily withdrew a virtually identical rule initially filed with the West Virginia Secretary of State and the Legislative Rule-Making Review Committee on May 31, 1990. That rule was withdrawn and the current rule was filed on August 1, 1990, to give the insurance industry more lead time in which to comply with requirements of the rule.



Personal Financial Security Division

151 Farmington Avenue
Hartford, Connecticut 06156
(203) 273-3397

Paul G. Delaney
Manager, Contract & Legal Services
Life & Health Operations

August 16, 1990

Mr. B. Keith Huffman, General Counsel
Office of the Insurance Commissioner
2019 Washington Street - East
Charleston, WVa 25305

RECEIVED

AUG 20 1990

LEGAL DIVISION
W. VA. INS. DEPT.

AEINA LIFE INSURANCE AND ANNUITY COMPANY
WEST VIRGINIA PROPOSED REGULATION 29
TEMPOROMANDIBULAR AND CRANIOMANDIBULAR DISORDERS

Dear Mr. Huffman:

This letter is written in response to proposed regulation 29 concerning TMD and CMD coverage. We appreciate the opportunity to offer these comments. Although Aetna discontinued the sale of individual health insurance policies in May 1990, these comments are offered because the regulation purports to cover renewals of individual policies.

We pay TMD and CMD claims on the same basis as any other illness, even though no illnesses - neither these or any others - are mentioned by name. We believe, therefore, that we comply with Section 33-16-3f and that no further action is required.

On a more general note, however, we would, for individual insurance only, strongly recommend against any requirement that the insurer offer coverage that the applicant can refuse. The sale of individual insurance is innately inefficient because the sales process involves one applicant at a time. Standardization of the product is the most important and widely used efficiency left to insurers in the individual market. What the standard product provides is not as important as the fact that the product is the same statewide. Proposed regulation 29 would take even that efficiency away.

We would not oppose extending coverage to existing policyholders since we already provide that coverage. Again, however, we would oppose the extension of any right of refusal. Offers would be by mail with no agent present. Existing insureds do not need an unlikely letter from Aetna about dropping coverage for disorders cryptically known as TMD and CMD about which they were previously comfortable to know nothing. With so much publicity about predatory sales practices, particularly among the elderly, letters about coverage reduction invite trouble unnecessarily.

B. Keith Huffman
August 16, 1990
Page 2

If a waiver program is still desired, there should be an exemption where the difference in premium does not exceed 1%. The negligible amount of premium involved does not warrant radical and disruptive solutions such as rights of refusal.

Finally, Section 6.1.(B) exempts almost all group insurance policies. It is individual insurance, however, that is in the most serious affordability crunch and can least afford product inefficiency. The right of refusal causes far more detriment to individual insurers than it does benefit for the public.

Very truly yours,



Paul G. Delaney, Manager
Health Operations, PPB2
Contract & Legal Services
Aetna Life Insurance and Annuity Company
(203) 273-3397
426

C:
D. Bavelas, PPB2
D. Gibbs, PPB3
M. Marek, PPB4
Michael Herman, HIAA, Wsh. Office
West Virginia File

The PHOENIX

August 20, 1990

Mr. B. Keith Huffman
Office of the Insurance Commissioner
2019 Washington Street, East
Charleston, WV 25305

RE: West Virginia Proposed Rule Series 29 concerning Health Insurance Benefits for Temporomandibular and Craniomandibular Disorders

Dear Mr Huffman:

We appreciate the opportunity to provide our comments with respect to the proposed rule referenced above.

Section 4. (A) requires that "an insured be given the option of declining coverage for temporomandibular disorders (TMD) and craniomandibular disorders (CMD)...". We would like clarification as to the term "insured". With respect to a Group Medical policy, does the Department interpret the term "insured" to mean the employer group as a whole or each insured employee under the group plan?

If the intent is that coverage be offered individually to each insured employee within the group, (with each employee having a separate right to reject the benefit), we would have the following concerns:

1. Offering the benefit on an individual basis violates the two key principles of group insurance: spreading of risk and indemnification of unplanned expenses. At the time of selection, many individuals will know the likelihood of their needing the benefit and only those individuals who need the coverage will elect it.
2. Our systems for billing, issue and claims administration cannot currently accomodate a benefit offer on an individual basis. Modification of these systems would increase the costs of administration that we would have to build into our health insurance premiums.

We would not have a concern with offering the benefit to each group policyholder. We would not be violating the risk sharing principles of group insurance, nor would we be materially increasing our administrative costs since we currently offer other optional benefits on a group basis.

Thank you for your consideration of these comments. If further information is desired, please feel free to contact us.

Sincerely,



Nancy E. Petty, Manager
Group Contract/Compliance Department

cc: J. Bruce Ferguson, ACLI

RECEIVED

AUG 27 1990

LEGAL DIVISION
W. VA. INS. DEPT.

PACIFIC MUTUAL



PM GROUP

August 29, 1990

RECEIVED

AUG 31 1990

LEGAL DIVISION
W. VA. INS. DEPT.

B. Keith Huffman
General Counsel
Office of the Insurance Commissioner
2019 Washington Street, East
Charleston, WV 25305

Dear Mr. Huffman:

On behalf of Pacific Mutual Life Insurance Company and PM Group Life Insurance Co., I am responding with comments to your Department's Legislative rule 33-16 Series 29, relating to Health Insurance Benefits For Temporomandibular And Craniomandibular Disorders.

We note that section 6.1 states that necessary forms must be filed by August 1, 1990. We respectfully request that the date by which forms must be filed be changed to allow a reasonable period of time within which to comply.

We certainly thank you for this opportunity to submit our comments on Legislative Rule 33-16 Series 29. Please let us know if we can provide any additional input.

Respectfully,

Gary L. Miller
Research Analyst
(714) 760-4722
FAX (714) 968-4304

cc: J. Bruce Ferguson, Legislative Director, American Council of Life Insurance

PM Group Life Insurance Co.
17360 Brookhurst Street
Fountain Valley, California 92708
P.O. Box 2890
Newport Beach, CA 92658-9010

A Pacific Financial Company