# WEST VIRGINIA

# SECRETARY OF STATE

**KEN HECHLER**

# ADMINISTRATIVE LAW DIVISION

Form #7

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## 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), & 33-25A-20

EMERGENCY 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 RULE BEING FILED AS AN EMERGENCY: Series 29

TITLE OF RULE BEING FILED AS AN EMERGENCY: Health Insurance Benefits For Tempormandibular 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

Hanley C. Clark

Hanley C. Clark
Insurance Commissioner

Use Additional Sheets If Necessary.

STATE OF WEST VIRGINIA

GASTON CAPERTON
GOVERNOR

HANLEY C. CLARK
INSURANCE COMMISSIONER

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CONSENT TO PROPOSAL OF RULE

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.

Charles O. Lorensen
Secretary of Tax and Revenue

"We are an Equal Opportunity Employer"

Title Number 114
Series 29

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 Tempormandibular 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 taken the past 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. 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.

Chapter 33-16, Series 29
Title 114

## BRIEF SUMMARY

The attached regulations require a mandatory offering of insurance coverage for the diagnosis of and certain treatments of temporomandibular joint disorder (TMJ), craniomandibular joint disorder (CMD), and temporomandibular disorder (TMD). These coverages were determined by the Insurance Commissioner in conjunction with a six member panel of medical and insurance experts nominated by interest groups in both fields. This procedures was dictated by S.B. 252 effective July 1, 1989, and has taken eleven months to complete.

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

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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.

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

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

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 _____date_____ 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.

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.