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November 30, 2001

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Insurance Commission

RULE: New Rule, 114CSR59, Consent to Rate & Guide "a" Rate Agreements

DATE FILED AS AN EMERGENCY RULE: November 29, 2001

DECISION NO. 13-01

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

JOE MANCHIN, III  
Secretary of State

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SECRETARY OF STATE

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EMERGENCY RULE DECISION  
(ERD 13-01)

AGENCY: Insurance Commission  
RULE: New Rule, 114CSR59, Consent to Rate & Guide "a" Rate Agreements

FILED AS AN EMERGENCY RULE: November 29, 2001

- par. 1 The Insurance Commission (Commission) has filed the above new rule as an emergency rule.
- par. 2 W. Va. 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].
- par. 4 (A) Procedural Compliance: W. Va. 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 Commission filed this emergency rule with supporting documents with the Secretary of State November 29, 2001 and with the LRMRC November 30, 2001.

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

par. 8 (B) Statutory Authority -- W. Va. Code §33-20B-2 reads in part:

*(e) An insurer may use guide "A" rates and other nonapproved rates, also known as "consent to rates": Provided, That the insurer shall, prior to entering into an agreement with an individual provider or any health care entity, submit guide "A" rates and other nonapproved rates to the commissioner for review & approval: Provided, however, That the commissioner shall propose legislative rules for promulgation in accordance with the provisions of WV Code§29A-3, which set forth the standards & procedure for reviewing and approving guide "A" rates & other nonapproved rates. No insurer may require execution of a consent to rate endorsement for the purpose of offering to issue or issuing a contract or coverage to an insured or continuing an existing contract or coverage at a rate in excess of that provided by a filing otherwise applicable.*

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

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

*(f) 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 Commission are as follows:

This proposed emergency rule sets forth the standards & procedures for approval of consent to rate agreements & guide "a" rate agreements between medical malpractice insurers & their insureds. On Nov. 6, 2001, the WV Legislature passed SB 6014 which amended WV Code §33-20B-2 relating to rate making for medical malpractice insurance. This emergency rule is being proposed pursuant to the language in subsection (e) of WV Code §33-20B-2. which requires the Insurance Commissioner to propose rules for legislative approval. The rule must be filed as an emergency rule to accommodate insureds with policies that are close to expiring and who will be without medical malpractice insurance coverage absent an agreement with the insurer on a non-standard rate at which the insurer will write the

risk. In order to meet the immediate needs of health care providers in obtaining coverage, this rule must be promulgated as an emergency rule.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "prevent substantial harm to public interest"

par. 14 This decision shall be cited as Emergency Rule Decision 13-01 or ERD 13-01 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Insurance Commission, the Attorney General and the Legislative Rule Making Review Committee.

  
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JOE MANCHIN, III  
Secretary of State

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