

Office of the Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

Natalie E. Tennant
Secretary of State
State of West Virginia

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Fax: (304) 558-0900
www.wvsos.com

September 9, 2009

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Office of the Insurance Commissioner

RULE: Amendment, 114CSR64, Mental Health Parity

DATE FILED AS AN EMERGENCY RULE: July 31, 2009

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

2009 SEP -9 PM 5: 28

FILED

DECISION NO. 18-09

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.

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 18-09)

AGENCY: Office of the Insurance Commissioner
RULE: Amendment, 114CSR64, Mental Health Parity
FILED AS AN EMERGENCY RULE: July 31, 2009

- par. 1 The Insurance Commissioner (Commissioner) has filed the above amendment to an existing 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 Commissioner filed this emergency rule with supporting documents with the Secretary of State July 31, 2009 and with the LRMRC July 31, 2009.
- par. 7 It is the determination of the Secretary of State that the Commissioner 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 §33-2-10 reads:
- (a) The commissioner is authorized to promulgate and adopt rules relating to insurance as are necessary to discharge his or her duties and exercise his or her powers and to effectuate the provisions of this chapter, protect and safeguard the interests of policyholders and the public of this state.*
- (b) The commissioner is authorized to promulgate rules necessary to discharge his or her duties relating to workers' compensation insurance as set forth in chapter twenty-three of this code, which shall be exempt from the provisions of chapter twenty-nine-a, article three*

of this code, except that these rules shall be filed with the Secretary of State's Office.
(c) Prior to assuming regulatory authority over workers' compensation insurance pursuant to article two-c, chapter twenty-three of this code, the commissioner shall review and revise all applicable rules to reflect the assumption of this new regulatory authority: Provided, That all such revisions shall be exempt from the provisions of chapter twenty-nine-a, article three, except that the amended rules shall be filed with the Secretary of State's Office.

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 – 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 Commissioner are as follows:

Federal legislation enacted in October 2008 requires that large group health plans (50+) that offer mental health benefits to provide parity between such benefits and medical/surgical benefits with respect to treatment limits (same limits on number of inpatient & outpatient visits) and financial limitations (same deductibles, copays & other cost sharing). The law does not preempt state laws, and it permits stronger state laws to continue in effect. Overall, West Virginia's mental health parity law is considerably stronger the new federal law; however, until the 2009 amendment to the state parity statute, West Virginia's method of measuring the overall cost of parity (MH benefits can be reduced if the MH benefits costs exceeds 2%) was different than the new federally-prescribed method (WV used "anticipated costs" rather than the federal "actual cost" measure). The proposed amendments are also necessary to reflect this recent state-law change, as well as to flush out some of the other aspects of the federal law (parity in use of out of network providers, actuarial certification of the costs & record retention(. The amendment to the state parity statute (HB3288(became effective August 25, 2009 with an internal effective date of October 3, 2009 and the emergency rule will need to be in place by October 3 in order to comply with the newly amended statute and with federal law.

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

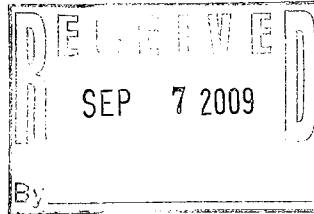
This decision shall be cited as Emergency Rule Decision 18-09 or ERD 18-09 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Office of the Insurance Commissioner, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

Entered _____

FILED
2009 SEP -9 PM 5:48
OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA



Toll Free: 1-800-598-884
Phone: (304) 345-7312
Fax: (304) 342-6090
<http://www.wvmhca.org>

September 01, 2009

Natalie Tenant
Secretary of State
Bldg. 1, Suite 157-K
1900 Kanawha Blvd. East
Charleston, WV 25305-0770

Secretary Tennant,

Thank you for the opportunity to review and comment on the proposed emergency rules for the Mental Health Parity legislation (HB 3288) that recently passed in the West Virginia legislature.

We believe the Insurance Commission's assessment of the scope of the proposed rules and legislation is accurate. The legislation essentially amended the method by which the insurance carriers could calculate relief from parity if costs for mental healthcare exceeded 2% of the costs for the entire healthcare plan. Requiring carriers to present actual costs for a cap request as opposed to anticipated costs is a good move and brings WV in compliance with recent changes in federal law. Also, cost containment measures can only be approved for one year at a time preventing a carrier from receiving permanent relief for what maybe a temporary rise in cost. House Bill 3288 also changed covered entities in state law from 25 or more employees to 50 or more which is what the federal law requires. This change was unnecessary since a more stringent state law would have superseded the federal law in that regard, however it was a compromise agreed to during negotiations with the legislature and insurance commission.

We realize that the forms utilized to request cost containment will be changing considerably which is why they have been struck as an appendix accompanying the original rule. Even though we have not had the opportunity to review proposed forms requesting cost containment, we have confidence that the Insurance Commission will develop appropriate forms complying with federal and state law accurately reflecting the provisions prescribed in the emergency rule. Mental health parity is very important to ensure equitable treatment of physical and psychiatric health. Mental health is essential to your overall health, and healthcare should reflect self direction and choice as well as responsibility.

We will continue to review the proposed rule and submit comments as needed.

If you have any questions or concerns please contact me.

Respectfully,

A handwritten signature in cursive script that reads "Debbie Toler".

Debbie Toler
Executive Director
WVMHCA

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2009 SEP -8 PM 2:15

FILED

WVMHCA

713 Bigley Avenue, Charleston, West Virginia 25302