

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

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2002 JUN 18 P 2:51

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Insurance Commission TITLE NUMBER: 114

CITE AUTHORITY: W.Va. Code §§ 33-2-10 and 33-16-3a

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 PROPOSED: 64

TITLE OF RULE BEING PROPOSED: Mental Health Parity

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 18 AT 4:30 p.m.. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Gara Hoke, Associate Counsel
Insurance Commission
1124 Smith Street
P.O. Box 50540
Charleston, WV 25305-0540

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Brian M. Kastick, Secretary of Tax and Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SCANNED

84.80



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Legal Division

BOB WISE
Governor

JANE L. CLINE
Insurance Commissioner

June 18, 2002

HAND DELIVERED

Ms. Judy Cooper, Director
Administrative Law Division
Office of Secretary of State
State Capitol
Charleston, West Virginia 25305


Dear Ms. Cooper:

Enclosed please find for filing one (1) copy of the following:

- 1) Notice Of A Comment Period On A Proposed Rule and consent of Tax and Revenue Cabinet Secretary;
- 2) Brief Summary of Rule;
- 3) Statement of Circumstances;
- 4) Fiscal Note; and
- 5) The proposed Rule entitled "Mental Health Parity" (Series 64).

Please contact me if further information is required.

Sincerely,


Jane L. Cline
Insurance Commissioner

JLC/jz
Enclosures

Department of Tax and Revenue
Agency Questionnaire

Re: Legislative Rule to be Filed

MENTAL HEALTH PARITY

TITLE 114, SERIES 64

Question 1: Are regulations required?

Yes, W. Va. Code § 33-16-3a requires the Commissioner of Insurance to propose rules for legislative approval, with respect to aggregate lifetime limits and annual limits on different categories of medical and surgical benefits.

Question 2: Is the rule you are proposing controversial? If yes, what are the pros and the cons?

The Legislature passed House Bill 4039 during the 2002 legislative session after several years of debate. This rule, however, only seeks to clarify and to implement the measures stated in the bill. To that end, the drafters of this rule met with representatives from industry, clinical and regulatory perspectives to gather the proper information within which to create a legal framework for mental health parity to exist.

Question 3: Is the rule you are proposing a copy of another state's rule? A model rule? Custom-drafted?

This rule is custom-drafted, based on a combination of state and federal legislation, developed after research regarding the state of mental health parity today.

Question 4: What are the really important things you think the Secretary of Tax and Revenue should know about this rule and the issues that surround it?

House Bill 4039, codified at W. Va. Code § 33-16-3a, placed the burden on the Insurance Commissioner to make certain regulatory determinations, therefore necessitating promulgation of a rule to provide standards and procedures for the implementation of mental health parity. This rule creates a legal

Mental Health Parity
Title 114, Series 64

framework within which insurers can develop an environment of parity between mental health and medical-surgical benefits. This rule provides a formula for substituting both an aggregate lifetime limit and annual limit for a health plan that includes no or different limits on different categories of medical and surgical benefits. In addition, this rule defines the parameters of application and calculation for additional cost containment measures, as well as requiring reports from insurers with respect to the impact of mental health parity expenses on budgets from the preceding year. This latter information provides data necessary for the Insurance Commissioner to report to the Legislature, beginning on or before the thirty-first day of December, two thousand five, and annually thereafter.

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MENTAL HEALTH PARITY

TITLE 114, SERIES 64

BRIEF SUMMARY OF RULE

W. Va. Code § 33-16-3a requires that the Commissioner propose rules for legislative approval, with respect to aggregate lifetime limits and annual limits for those health benefit plans that include no or different limits on different categories of medical and surgical benefits. This rule provides a formula for substituting both an aggregate lifetime limit and annual limit for such health plans. Furthermore, this rule clarifies the calculation data necessary to support additional cost containment measures for insurers that anticipate total costs for treatment for mental illness, for any plan, will exceed or have exceeded two percent of the total costs for such plan in a base period, or one percent for any group with twenty-five members or less. This rule also provides procedures for implementing the aforementioned criteria.

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MENTAL HEALTH PARITY

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STATEMENT OF CIRCUMSTANCES

The federal Mental Health Parity Act (MHPA) was signed into law on September 26, 1996. The goal was broader health insurance coverage for mental health treatment. Subsequently, the West Virginia Legislature passed House Bill 4039 during the 2002 legislative session, which amended codified mental health provisions at W. Va. Code § 33-16-3a. The purposes of this rule are to 1) create a legal framework within which insurers can develop an environment of parity between mental health and medical-surgical benefits; 2) Provide for parity in the application of aggregate lifetime limits, and annual limits, between mental health benefits and medical-surgical benefits; 3) Define standards by which health care professionals shall implement parity; 4) Minimize the possibilities of confusion and interruption of patient care; and 5) Ensure that cost containment measures not applicable to medical-surgical benefits are also not applicable to mental health benefits until demonstrated to be actuarially necessary. By proposing this rule, the Insurance Commissioner fulfills a statutory duty and a legislative desire to extend broader mental health treatment to subscribers and members of group health plans.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Mental Health Parity
 Title 114, Series 64 - LEGISLATIVE

Type of Rule: X Legislative Interpretive Procedural

Agency: Insurance Commissioner

Address: Post Office Box 50540
 1124 Smith Street, Greenbrooke Building
 Charleston, West Virginia 25305-0540

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1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	None	None	None	None	None
PERSONAL SERVICES	None	None	None	None	None
CURRENT EXPENSE	None	None	None	None	None
REPAIRS AND ALTERNATIONS	None	None	None	None	None
EQUIPMENT	None	None	None	None	None
OTHER	None	None	None	None	None

2. Explanation of above estimates:

This law and accompanying rule requires health care insurers to apply for approval of cost containment measures should results justify and requires the Insurance Commissioner to submit a report annually.

These requirements will increase staff work loads, however estimates indicate the time requirement can be incorporated into our existing work schedules.

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3. Objectives of these rules:

House Bill 4039, codified at W. Va. Code § 33-16-3a, placed the burden on the Insurance Commissioner to make certain regulatory determinations, therefore necessitating promulgation of a rule to provide standards and procedures for the implementation of mental health parity. This rule creates a legal framework within which insurers can develop an environment of parity between mental health and medical-surgical benefits. This rule provides a formula for substituting both an aggregate lifetime limit and annual limit for a health plan that includes no or different limits on different categories of medical and surgical benefits. In addition, this rule defines the parameters of application and calculation for additional cost containment measures, as well as requiring reports from insurers with respect to the impact of mental health parity expenses on budgets from the preceding year. This latter information provides data necessary for the Insurance Commissioner to report to the Legislature, beginning on or before the thirty-first day of December, two thousand five, and annually thereafter.

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.

None

C. Economic Impact on Citizens/Public at Large.

None

Date: June 18, 2002

Signature of Agency Head or Authorized Representative


JANE L. CLINE, INSURANCE COMMISSIONER

114CSR64
WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 64
MENTAL HEALTH PARITY

Section

- 114-64-1. General.
- 114-64-2. Definitions.
- 114-64-3. Allowance of Additional Cost Containment Measures.
- 114-64-4. Calculation for Application of Additional Cost Containment Measures.
- 114-64-5. Aggregate Lifetime Limits.
- 114-64-6. Annual Limits.
- 114-64-7. Rates and Forms Filings.
- 114-64-8. Coverage for Alcohol Treatment.

114CSR64
WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

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SERIES 64
MENTAL HEALTH PARITY

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§114-64-1. General.

1.1. Scope. --

a. The purposes of this rule are to:

1. Create a legal framework within which insurers can develop an environment of parity between mental health and medical-surgical benefits;
2. Provide for parity in the application of aggregate lifetime limits, and annual limits, between mental health benefits and medical-surgical benefits;
3. Define standards by which health care professionals shall implement parity;
4. Minimize the possibilities of confusion and interruption of patient care;
5. Ensure that cost containment measures not applicable to medical-surgical benefits are also not applicable to mental health benefits until demonstrated to be actuarially necessary.

b. This rule applies to:

1. Any and all insurers transacting the business of insurance under W. Va. Code §§33-16-1 et seq. and 33-25A-1 et seq., or who are otherwise subject to W. Va. Code §33-16-3a.
2. Individual subscribers and members and to all group members of a group accident and sickness insurance plan.

1.2. Authority. -- W. Va. Code §33-2-10 and 33-16-3a.

1.3. Filing Date. --

1.4. Effective Date. --

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§114-64-2. Definitions.

2.1. "Additional cost containment measures" means relief provided to a group health plan after it has actuarially demonstrated to the commissioner that its total anticipated costs for treatment of mental illness for any plan will exceed or will have exceeded two percent, or one percent for any group with twenty-five members or less.

2.2. "Commissioner" means the West Virginia insurance commissioner.

2.3. "Base period" means the period used to calculate whether the plan may claim the two percent or one percent increased cost exemption. The base period must be twelve consecutive calendar months and begin on the first day of the calendar year in the year immediately preceding the year in which the increased cost exemption would be applicable.

2.4. "Claims" means, for purposes of this rule, individual requests for reimbursement or proof of loss made by or on behalf of an insured to an insurer or a provider to an insurer, or its intermediary, administrator or representative.

2.5. "Diagnostic codes" means a numerical identifier as set forth in the American psychiatric association's diagnostic and statistical manual of mental disorders, as periodically revised.

2.6. "Diagnostic related groups" means a numerical code method of determining financing to reimburse various providers for services performed. A diagnostic related group is associated with a method of classifying inpatient hospital services published in the federal register.

2.7. "Group members" means multiple participants in a health insurance plan.

2.8. "Incurred expenditures" means costs associated with mental health benefits and medical-surgical benefits. Incurred expenditures include actual claims paid, per member per month case management expense and utilization review during the base period. Incurred expenses do not include premiums.

2.9. "Individual subscribers and members" means a single participant in a group accident and sickness insurance plan.

2.10. "Insurer" means, for purposes of this rule, an insurer licensed to transact accident and sickness insurance in this state, and a health maintenance organization to whom a certificate

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of authority has been issued by the West Virginia Insurance Commissioner under the provisions of W. Va. Code §§33-16-1 et seq. and 33-25a-1 et seq., or who are otherwise subject to W. Va. Code §33-16-3a.

2.11. "Mental illness" means, for purposes of this rule, any illness or treatment that is specified as related to mental health in the form of diagnostic related groups, diagnostic codes, pharmaceutical and/or therapeutic classes.

2.12. "Pharmaceutical classes" means a numerical identifier of pharmaceuticals as set forth in the American psychiatric association's diagnostic and statistical manual of mental disorders, under the following classifications, as periodically revised: antianxiety and sedative-hypnotic drugs, antimania drugs, antidepressants, antipsychotics, CNS stimulants, alcohol antagonists and antidementia drugs.

2.13. "Therapeutic classes" means a numerical identifier of therapeutic treatments as set forth in the American psychiatric association's diagnostic and statistical manual of mental disorders, as periodically revised.

2.14. "Total anticipated costs" means all costs anticipated to be associated with implementing mental health parity including claims paid, per member per month management expense and utilization review.

2.15. "Total costs" means all costs associated with implementing and transacting a health benefit plan including both medical-surgical and mental health benefits including claims paid, per member per month management expense and utilization review.

§114-64-3. Allowance of Additional Cost Containment Measures.

3.1. An insurer may apply additional cost containment measures, upon approval of the commissioner, if the insurer submits actuarial information to the commissioner demonstrating that its total anticipated costs for treatment of mental illness for any plan will exceed or have exceeded two percent, or one percent for any group with twenty-five members or less, of the total costs for the plan in any base period.

a. Whether a treatment is, for purposes of this rule, a treatment for mental illness will be determined by inclusion of the treatment in the diagnostic response groups, diagnostic codes, pharmaceutical classes or therapeutic classes related to mental illness as determined by the American psychiatric association's diagnostic and statistical manual of mental disorders, as periodically revised.

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b. If a treatment is included in one or more diagnostic related groups, diagnostic codes, pharmaceutical and/or therapeutic classes, it shall be included in the insurer's calculations and actuarial assessment for total anticipated costs.

3.2. The total anticipated costs must be based on actual claims data, and may not be based on an increase in insurance premiums.

§114-64-4. Calculation for Application of Additional Cost Containment Measures.

4.1. If an insurer anticipates that its total costs for treatment of mental illness for any plan will exceed or has exceeded two percent, or one percent for any group with twenty-five members or less, of the total costs for such plan in any base period, the following calculation shall be used as part of an application to implement cost containment measures intended by the insurer to maintain costs below the two percent or one percent of total costs threshold:

- a. Total anticipated costs during the base period, for that plan, divided by,
- b. Total costs during the base period, for that plan.

§114-64-5. Aggregate Lifetime Limits.

5.1. An average aggregate lifetime limit may be imposed if the benefit categories to which separate limits apply account for at least one-third of total plan expenditures and are comparable in scope to mental health benefits. The average is calculated by weighting each applicable limit to reflect its share of plan expenditures. Any unlimited categories are figured into the average by using in place of a limit a reasonable estimate of the maximum plan expenditure that could possibly be incurred in connection with all such categories, and weighting this estimate to reflect the proportion of total plan expenditures attributable to all such categories.

§114-64-6. Annual Limits.

6.1. An annual limit may be imposed if the benefit categories to which separate limits apply account for at least one-third of total plan expenditures and are comparable in scope to mental health benefits. The average is calculated by weighting each applicable limit to reflect its share of plan expenditures. Any unlimited categories are figured into the average by using in place of a limit a reasonable estimate of the maximum plan expenditure that could possibly be incurred in connection with all such categories, and weighting this estimate to reflect the proportion of total plan expenditures attributable to all such categories.

§114-64-7. Rates and Forms Filings.

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7.1. For those insurers that anticipate total costs exceeding two percent, or exceeding one percent for groups of twenty-five members or less, an application containing actuarial data shall be filed with the Rates and Forms Division, West Virginia Insurance Commission to be qualified to implement any costs containment measures that may be applicable.

7.2. The actuarial application shall be filed no less than one hundred twenty days before the anticipated effective date or renewal date of the plan.

7.3. The commissioner shall have sixty days within which to approve or disapprove the use of cost containment measures.

7.4. The approval of additional cost containment measures shall be on an annual basis and may result in a directive to add or delete cost containment measures.

7.5. All insurers shall file an annual report, on a form prescribed by the commissioner, regarding the fiscal impact of mental health parity expenses on their budgets for the preceding year.

7.6. A summary of the data and the computation supporting the anticipated costs of mental health parity and anticipated total costs must be made available to plan participants and beneficiaries, free of charge, upon the participant or beneficiary's written request.

7.7. If additional actuarial review, outside of that of the scope of the West Virginia Insurance Commission, is considered necessary to determine whether an insurer is eligible for additional cost containment measures, the insurer shall pay the costs incurred in the additional review.

§114-64-8. Coverage for Alcohol Treatment.

Coverage for alcohol treatment shall be included in mental health treatment. Any other language restricting alcohol treatment coverage, including that found in W.Va. Code §33-16-3c, is superceded by W. Va. Code §33-16-3a.