

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**  
Form #7

Do Not Mark In This Box  
Filing Date

FILED

2017-4 P 5:18

WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

**NOTICE OF AN EMERGENCY RULE**

AGENCY: Insurance Commission TITLE NUMBER: 114

CITE AUTHORITY: West Virginia Code Sections 33-2-10 and 33-16-3a

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

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

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

SEE ATTACHED

Use additional sheets if necessary

  
Authorized Signature

SCANNED

**Mental Health Parity  
Title 114, Series 64**

**THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS  
FOLLOWS:**

House Bill 4039 amended W. Va. Code § 33-16-3a. In doing so, insurers will now be provided the opportunity to apply for additional cost containment measures if the insurer can actuarially demonstrate to the Insurance Commissioner that its total anticipated costs for treatment for mental illness, for any plan, will exceed or will 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. These provisions apply to group health plans for plan years beginning on or after the first day of January, two-thousand three. To be able to implement W. Va. Code § 33-16-3a on the first day of January, two thousand three, rules must be in place to establish the specific criteria necessary to apply for additional cost containment measures, the formulas to be applied, aggregate lifetime and annual limits and the mechanisms for application and reporting of this data. Therefore, this emergency rule is necessary to comply with statutory requirements.

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

Form #2

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**FILED**

2002 JUN 18 P 2:51

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:

**Legislative Rule Making**

**JUN 18 2002**

**Review Committee**

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

Gara Hoke, Associate Counsel

Insurance Commission

1124 Smith Street

P.O. Box 50540

Charleston, WV 25305-0540



Brian M. Kastick, Secretary of Tax and Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**Insurance Commissioner  
Emergency Rule  
Title 114, Series 64**

**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.

**Insurance Commissioner  
Emergency Rule  
Title 114, Series 64**

**MENTAL HEALTH PARITY**

**TITLE 114, SERIES 64**

**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. Insurers will now be provided the opportunity to apply for additional cost containment measures if the insurer can actuarially demonstrate to the Insurance Commissioner that its total anticipated costs for treatment for mental illness, for any plan, will exceed or will 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. These provisions apply to group health plans for plan years beginning on or after the first day of January, two thousand three. To be able to implement W. Va. Code § 33-16-3a on the first day of January, two thousand three, rules must be in place to establish the specific criteria necessary to apply for additional cost containment measures, the formulas to be applied, aggregate lifetime and annual limits and the mechanisms for application and reporting of this data. Therefore, this emergency rule is necessary to comply with statutory requirements.

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED EMERGENCY RULES**

**Rule Title:** Mental Health Parity  
Title 114, Series 64 - EMERGENCY

**Type of Rule:** \_\_\_ Legislative \_\_\_ Interpretive \_\_\_ Procedural X Emergency

**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 Emergency Rule**

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

**Rule Title:** Mental Health Parity  
Title 114, Series 64 - EMERGENCY

**3. Objectives of these emergency rules:**

House Bill 4039 amended W. Va. Code § 33-16-3a. In so doing, insurers will now be provided the opportunity to apply for additional cost containment measures if the insurer can actuarially demonstrate to the Insurance Commissioner that its total anticipated costs for treatment for mental illness, for any plan, will exceed or will 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. These provisions apply to group health plans for plan years beginning on or after the first day of January two thousand three. To be able to implement W. Va. Code § 33-16-3a on the first day of January two thousand three, rules must be in place to establish the specific criteria necessary to apply for additional cost containment measures, the formulas to be applied, aggregate lifetime and annual limits and the mechanisms for application and reporting of this data. Therefore, this emergency rule is necessary to comply with statutory requirements.

**4. Explanation of Overall Economic Impact of Proposed Emergency 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: November 4, 2002

**Signature of Agency Head or Authorized Representative**

  
\_\_\_\_\_  
JANE L. CLINE, INSURANCE COMMISSIONER

## QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

**DATE:** November 4, 2002

**TO:** LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

**FROM:** OFFICE OF THE INSURANCE COMMISSIONER  
ATTN: Legal Division  
1124 Smith Street  
Post Office Box 50540  
Charleston, West Virginia 25305-0540

**EMERGENCY RULE TITLE:** MENTAL HEALTH PARITY  
(Title 114, Series 64)

**1. Date of filing:**

November 4, 2002

**2. Statutory authority for promulgating emergency:**

W. Va. Code §§ 33-2-10 and 33-16-3a.

**3. Date of filing of proposed legislative rule:**

June 18, 2002

**4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?**

The emergency rule creates a new rule for the implementation and clarification of the procedures to provide mental health parity.

**5. Has the same or similar emergency rule previously been filed and expired?**

No.

**6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety and welfare.**

Though compliance with the time limit prescribed in W. Va. Code § 33-16-3a is the main purpose of the emergency rule, the rule is also necessary to allow certain insurers the opportunity to apply for additional cost containment measures, if specific criteria are met. In so doing, insurers are better able to serve the health needs of the general public.

MENTAL HEALTH PARITY

Title 114, Series 64

EMERGENCY

Page 2

7. **If the emergency rule was promulgated in order to comply with a time limit established by the Code of federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.**

House Bill 4039 amended W. Va. Code § 33-16-3a. In doing so, insurers will now be provided the opportunity to apply for additional cost containment measures, if specific criteria are met. These provisions apply to group health plans for plan years beginning on or after the first day of January, two thousand three. To be able to implement W. Va. Code § 33-16-3a on the first day of January, two thousand three, rules must be in place to establish the specific criteria necessary to apply for additional cost containment measures, the formulas to be applied, aggregate lifetime and annual limits and the mechanisms for application and reporting of this data. Therefore, this emergency rule is necessary to comply with statutory requirements.

8. **State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to public interest.**

Though compliance with the time limit prescribed by W. Va. Code § 33-16-3a is the main purpose of the emergency rule, the rule itself seeks to ensure the stability of health benefit plans by allowing certain insurers to apply for additional cost containment measures, if specific criteria are met. In essence, this process serves as a preventative measure to potential insurer instability and loss.

**114CSR64  
WEST VIRGINIA EMERGENCY RULE  
INSURANCE COMMISSIONER**

**SERIES 64**

**MENTAL HEALTH PARITY**

Section

- 114-64-1. General.
- 114-64-2. Definitions.
- 114-64-3. Providing Benefits for Serious Mental Illness.
- 114-64-4. Allowance of Additional Cost Containment Measures.
- 114-64-5. Calculation for Application of Additional Cost Containment Measures.
- 114-64-6. Aggregate Lifetime Limits.
- 114-64-7. Annual Limits.
- 114-64-8. Rates and Forms Filings.
- 114-64-9. Coverage for Alcohol Treatment.

114CSR64  
WEST VIRGINIA EMERGENCY RULE  
INSURANCE COMMISSIONER

SERIES 64

MENTAL HEALTH PARITY

FILED  
2007 NOV -4 P 5:18  
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;
- 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.

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 health benefit plan.
3. Group health plans which begin on or after the first day of January, 2003. The provision of this rule shall cease to be effective on and after the thirty-first day of March, 2007, unless further extended by the Legislature.

c. This rule does not apply to any policy of individual accident and sickness insurance issued in accordance with article fifteen of chapter thirty-three of the West Virginia Code. (W.Va. Code §§33-15-1, et seq.).

**Insurance Commissioner  
Emergency Rule  
Title 114, Series 64**

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

1.3. Filing Date. --

1.4. Effective Date. --

**§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 the first year, or the total costs for every year thereafter 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 insurer may claim the two percent or one percent increased cost exemption. The base period must be twelve consecutive calendar months ending on or about sixty days preceding the next filing of the application.

2.4. "Claims" means, for purposes of this rule, requests for reimbursement for payment of services 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 current 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 beneficiaries or members receiving health care coverage through a group health benefit plan.

2.8. "Health benefit plan" means benefits consisting of medical care provided directly, through insurance or reimbursement, or indirectly, including items and services paid for as medical care, under any hospital or medical expense incurred policy or certificate, hospital, medical or health service corporation contract, health maintenance organization contract, or plan provided by a multiple-employer trust or multiple-employer welfare arrangement. "Health benefit plan" does not include excepted benefits as defined by W.Va. Code §33-16-1a (f).

**Insurance Commissioner  
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2.9. "Incurred expenditures" means costs associated with mental health benefits and medical-surgical benefits. Incurred expenditures include actual claims paid and that percentage of per member per month case management expenses, administrative expenses, utilization review and capitation paid associated with mental health benefits during the base period. The allowable percentage is to be calculated by comparing actual amounts paid to providers per the terms of the health benefit plan or provider agreement for mental illness with the actual amounts paid to providers per the terms of the health benefit plan or provider agreement for all claims. Incurred expenses do not include premiums.

2.10. "Individual subscribers and members" means a single participant in a group health benefit plan.

2.11. "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 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.

2.12. "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.

2.13. "Pharmaceutical classes" means a numerical identifier of pharmaceuticals as set forth in the current 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.

2.14. "Plan" means, for purposes of this rule, filings consisting of each form offered for any group with more than twenty-five members. For groups with twenty-five members or less, filings may consist of each form offered or of that form offered as a group plan of twenty-five members or less.

2.15. "Serious mental illness" means an illness included in the current American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, as periodically revised, under the diagnostic categories or subclassifications of: (i) Schizophrenia and other psychotic disorders; (ii) bipolar disorders; (iii) depressive disorders; (iv) substance-related disorders with the exception of caffeine-related disorders and nicotine-related disorders; and (vi) anorexia and bulimia.

2.16. "Therapeutic classes" means a numerical identifier of therapeutic treatments as set forth in the current American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, as periodically revised.

**Insurance Commissioner  
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2.17. "Total anticipated costs" means all costs anticipated to be associated with implementing mental health parity, including actual claims paid and that percentage of per member per month case management expenses, administrative expenses, utilization review and capitation paid associated with mental health benefits during the base period. The allowable percentage is to be calculated by comparing actual amounts paid to providers per the terms of the health benefit plan or provider agreement for mental illness with the actual amounts paid to providers per the terms of the health benefit plan or provider agreement for all claims.

2.18. "Total costs" means all costs associated with implementing and transacting a health benefit plan, including both mental health benefits and medical-surgical benefits, including actual claims paid, and that percentage of per member per month case management expenses, administrative expenses, utilization review and capitation paid associated with mental health benefits during the base period. The allowable percentage is to be calculated by comparing actual amounts paid to providers per the terms of the health benefit plan or provider agreement for mental illness with the actual amounts paid to providers per the terms of the health benefit plan or provider agreement for all claims.

**§114-64-3. Providing Benefits for Serious Mental Illness.**

3.1. Each health benefit plan issued by an insurer shall provide benefits to all individual subscribers and members and to all group members for expenses arising from the treatment of serious mental illness. The expenses shall not include custodial care, residential care or schooling.

3.2 An insurer shall not discriminate between medical-surgical benefits and mental health benefits in the administration of its plan.

3.3 An insurer may make determinations of medical necessity and appropriateness, and may use health care quality and management tools, which may include but are not limited to utilization review, use of provider networks, implementation of cost containment measures, pre-authorization for certain treatments, setting coverage levels, including the number of visits in a given time period, using capitated benefit arrangements, using fee for service arrangements, using third party administrators and using patient cost sharing in the form of copayments, deductibles and coinsurance.

**§114-64-4. Allowance of Additional Cost Containment Measures.**

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

**Insurance Commissioner  
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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 current American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, as periodically revised.

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.

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

**§114-6-5. Calculation for Application of Additional Cost Containment Measures.**

5.1. If an insurer anticipates that its total 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 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.

**§114-64-6. Aggregate Lifetime Limits.**

6.1. An average aggregate lifetime limit may be imposed if the benefit categories to which separate limits apply account for at least one-third of the dollar amount of all plan payments for medical-surgical benefits expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the aggregate lifetime limits). Any reasonable method may be used to determine whether the dollar amounts expected to be paid under the plan will constitute one-third of the dollar amount of all plan payments for medical-surgical benefits.

**§114-64-7. Annual Limits.**

7.1. An average annual limit may be imposed if the benefit categories to which separate limits apply account for at least one-third of the dollar amount of all plan payments for medical-surgical benefits expected to be paid under the plan for the plan year (or for the portion of the plan year after a change in plan benefits that affects the applicability of the aggregate lifetime limits). Any reasonable method may be used to determine whether the dollar amounts expected to be paid under the plan will constitute one-third of the dollar amount of all plan payments for medical-surgical benefits.

**Insurance Commissioner  
Emergency Rule  
Title 114, Series 64**

**§114-64-8. Rates and Forms Filings.**

8.1. Insurers that anticipate total costs exceeding two percent, or exceeding one percent for groups of twenty-five members or less, shall file an application containing actuarially certified data with the Rates and Forms Division, West Virginia Insurance Commission to be qualified to implement any costs containment measures that may be applicable.

8.2. The actuarially certified application shall be filed no less than sixty days before the anticipated effective date or renewal date of the plan.

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

8.4. 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.

8.5. Each insurer 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.

8.6. An insurer shall make available 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 written request of the participant or beneficiary.

**§114-64-9. 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 superseded by W. Va. Code §33-16-3a.



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Legal Division

BOB WISE  
Governor

JANE L. CLINE  
Insurance Commissioner

November 4, 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 fourteen (14) copies of the following:

- 1) Notice of an Emergency Rule and Consent of Tax and Revenue Cabinet Secretary to Emergency Rule;
- 2) Notice of Comment Period on a Proposed Rule for the Series 64 Legislative Rule;
- 3) Brief Summary of Rule;
- 4) Statement of Circumstances;
- 5) Fiscal Note;
- 6) Legislative Rule-Making Review Committee Questionnaire
- 7) The proposed Emergency Rule entitled "Mental Health Parity" (Series 64).

Please contact me if further information is required.

Sincerely,

  
Vincent P. King  
General Counsel

VJK/jz  
Enclosures