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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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October 23, 2002

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Gara A. Hoke
Insurance Commissioner
Capitol Complex
Box 50540

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Mental Health Parity, 114CSR64**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

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SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Insurance Commission

Subject: Mental Health Parity, 114 CSR 64

Date: October 3, 2002

Staff Counsel: Connie A. Bowling

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PERTINENT DATES

Filed for public comment: May 29, 2002

Public comment period ended: July 1, 2002

Filed following public comment period: July 26, 2002

Filed LRMRC: July 26, 2002

Filed as emergency: N/A

Fiscal Impact: Increase of \$4,000 for staff services

ABSTRACT

This is a new rule which implements the provisions of HB4039 (2002 RS) requiring PEIA, HMOs and other group health plans to offer parity between treatments for medical/surgical conditions and mental health conditions.

The statute allow insurers to seek approval from the Commissioner for additional cost containment measures if it demonstrates that its total anticipated costs for the first year of implementation for treatment of mental illnesses will exceed 2% of the total costs of the plan (1% for plans with fewer than 26 members). In order to qualify for additional cost containment measures, the rule requires an insurer who anticipates exceeding the threshold percentage to file with the Commissioner a form containing actuarial information supporting its assertion. The threshold percentage is calculated by comparing actual payments to providers for mental health treatment with payments to providers for *all* claims. The rule states that "total anticipated costs"

must be based on actual claims data, not on increases in insurance premiums. A summary of this data and the insurer's computations must be provided to plan participants or beneficiaries upon request.

The statute also prevents an insurer from placing aggregate lifetime limits or annual limits on mental health benefits which are lower than the limits the policy places on medical/surgical benefits. Where the plan does not specify such limits on medical/surgical benefits or specifies different limits for different categories of medical/surgical treatments, the statute charges the Commissioner with the obligation to come up with an "average" limit to be applied to mental health benefits. The rule specifies that average limits may be imposed if the categories of medical/surgical benefits to which different limits apply account for 1/3 of the total plan expenditures and sets out the method for calculating the share of total expenditures which are attributable to each category, including those which have no limits.

The rule also specifies that an insurer which anticipates total mental health costs exceeding the threshold percentage must file the actuarial application with the Rates & Forms Division no less than 60 days before the effective date or renewal date of the plan. Such an application must be filed for every year in which the insurer seeks additional cost containment measures. The Commissioner has 60 days to approve or disapprove additional cost containment measures. All insurers are required to file an annual report showing the fiscal impact of mental health parity expenses on their budgets for the preceding year.

Finally, the rule specifies that treatment for alcohol abuse is to be included within the term "mental health treatment."

AUTHORITY

Statutory authority:

W. Va. Code § 33-2-10:

The commissioner is authorized to promulgate and adopt such rules and

regulations relating to insurance as are necessary to discharge his duties and exercise his powers and to effectuate the provisions of this chapter and to protect and safeguard the interests of policyholders and the public of this State.

W. Va. Code § 33-16-3a(a)(1):

(C) If a health benefit plan not previously described in this subdivision includes no or different aggregate lifetime limits on different categories of medical and surgical benefits, the commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code under which paragraph (B) of this subdivision shall apply, substituting an average aggregate lifetime limit for the applicable lifetime limit.

W. Va. Code § 33-16-3a(a)(2):

(C) If a health benefit plan not previously described in this subdivision includes no or different annual limits on different categories of medical and surgical benefits, the commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code under which paragraph (B) of this subdivision shall apply, substituting an average annual limit for the applicable annual limit.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

W. Va. Code § 33-16-3c (1991) provides that inpatient hospital benefits for alcoholism treatments provided beyond 30 days need not be the same as benefits for physical illness generally and sets minimum (but not maximum) limits on other alcoholism treatment benefits. The rule attempts to resolve the conflict between this statute and W. Va. Code § 33-16-3a by providing that these restrictions, as well as any other statutory restrictions on alcoholism treatments benefits have been superceded by the passage of HB4039.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel recommends technical modifications to clarify the meaning of the rule.