



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

JOE MANCHIN III
Governor

JANE L. CLINE
Insurance Commissioner

April 29, 2008

Ms. Judy Cooper
Manager - Administrative Law
Secretary of State's Office
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Re: Title 114, Series 66 Procedural Rule – Repeal

Dear Ms. Cooper:

The Offices of the Insurance Commissioner requests that the above subject procedural rule be repealed in its entirety effective April 29, 2008.

In 2007 the legislature adopted changes to the mental health parity statute, (HB 2578), which removed the 2007 sunset date and the annual OIC reporting requirement. These changes eliminated the need for the Annual Reporting Requirements Abstract contained in Appendix A of the Title 114, Series 66 procedural rule, and the still-relevant cost containment provisions were added to the Title 114, Series 64 rule (as Appendix A). The amended Series 64 rule was approved for promulgation by the Legislature during the 2008 regular session (SB 417) and will become effective on April 29, 2008.

Sincerely,

Timothy R. Murphy
Associate Counsel

TRM/jz

Attachments: Title 114, Series 66 Rule
H.B. 2578



**TITLE 114
PROCEDURAL RULE
INSURANCE COMMISSIONER**

**SERIES 66
MENTAL HEALTH PARITY COST CONTAINMENT MEASURES APPLICATION AND
ANNUAL REPORTING REQUIREMENTS**

§114-66-1. General.

1.1. Scope. -- This procedural rule sets forth requirements which the Commissioner considers necessary to carry out Rates and Forms Division Reporting Requirements for rate and form filings.

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

1.3. Filing Date. -- July 29, 2003.

1.4. Effective Date. -- August 28, 2003.

§114-66-2. Applicability.

2.1. The abstract form attached to this rule as Appendix A must be completed and filed with the Insurance Commissioner when filing for mental health parity cost containment measures or annual reporting requirements.

Appendix A

INSURANCE COMMISSIONER
STATE OF WEST VIRGINIA

MENTAL HEALTH PARITY COST CONTAINMENT MEASURES APPLICATION AND
ANNUAL REPORTING REQUIREMENTS ABSTRACT

INSTRUCTIONS: This form is to be completed as the annual report prescribed in WV Regulation 114-64-8.5 and/or when applying for cost containment measures as outlined in WV Regulation 114-64-4. All questions must be answered; if no answer is applicable, enter the reason for such determination.

Company Name:

NAIC Code:

Part of Group:

Date Applied:

Proposed Effective Date:

I. General Information.

1. Is this the initial application or annual report?

2. Base Period: From _____ to _____ (must be 12 consecutive months ending on or about 60 days preceding the next filing of the application)

3. Is there 25 members or less greater than 25 members?

4. If this is the first application, please provide the total anticipated costs for the first year for treatment of mental illness for any plan that will exceed 2% or 1% for any group with 25 members or less: _____

5. If this is beyond the first year, please provide total costs for each year thereafter for treatment of mental illness for any plan that will exceed 2% or 1% for any group with 25 members or less:

Please provide four years of data (include data prior to implementation of mental health parity):

	Base Period	Total Expenditures Incurred for Mental Health Benefits	Total Expenditures Incurred for all Benefits
a) actual claims incurred			
b) case management expenses			
c) administrative expenses			
d) utilization review paid			
e) capitation paid associated with mental health benefits			

II. If you are applying for Cost Containment, please complete the following:

1. What Cost Containment measures do you plan to implement?
2. What is the anticipated reduction in cost for mental health benefits by implementing these cost containment measures?
3. What is the total anticipated cost of mental health benefits after implementation of cost containment measures for Mental Health Parity?
4. What is the total anticipated cost of all benefits after the implementation of cost containment for Mental Health Parity?

III. This application must be actuarially certified. Please attach the appropriate certification to this form.

1 **H. B. 2578**

2
3 (By Delegates Kominar, Craig, Hrutkay, Mahan, Palumbo,
4 Webster, White, Armstead and Ellem)

5 [Introduced January 26, 2007; referred to the
6 Committee on Banking and Insurance then the Judiciary.]
7
8
9

10 A BILL to amend and reenact §33-16-3a of the Code of West Virginia,
11 1931, as amended, relating to extending mental health benefit
12 packages; removing the sunset provision for mandated insurance
13 parity; and removing insurance commissioner reporting
14 requirement.

15 *Be it enacted by the legislature of West Virginia:*

16 That §33-16-3a of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

18 **CHAPTER 33. INSURANCE.**

19 **ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**

20 **§33-16-3a. Same -- Mental health.**

21 (a)(1) Notwithstanding the requirements of subsection (b) of
22 this section, any health benefits plan described in this article
23 that is delivered, issued or renewed in this state shall provide
24 benefits to all individual subscribers and members and to all group

1 members for expenses arising from treatment of serious mental
2 illness. The expenses do not include custodial care, residential
3 care or schooling. For purposes of this section, "serious mental
4 illness" means an illness included in the American psychiatric
5 association's diagnostic and statistical manual of mental
6 disorders, as periodically revised, under the diagnostic categories
7 or subclassifications of: (i) Schizophrenia and other psychotic
8 disorders; (ii) bipolar disorders; (iii) depressive disorders; (iv)
9 substance-related disorders with the exception of caffeine-related
10 disorders and nicotine-related disorders; (v) anxiety disorders;
11 and (vi) anorexia and bulimia.

12 (2) Notwithstanding any other provision in this section to the
13 contrary, in the event that an insurer can demonstrate actuarially
14 to the insurance commissioner that its total anticipated costs for
15 treatment for mental illness, for any plan will exceed or have
16 exceeded two percent of the total costs for such plan in any
17 experience period, then the insurer may apply whatever cost
18 containment measures may be necessary, including, but not limited
19 to, limitations on inpatient and outpatient benefits, to maintain
20 costs below two percent of the total costs for the plan: *Provided,*
21 That for any group with twenty-five members or less, the insurer
22 may apply such additional cost containment measures as may be
23 necessary if the total anticipated actual costs for the treatment
24 of mental illness will exceed one percent of the total costs for
25 the group.

1 (3) The insurer shall not discriminate between medical-
2 surgical benefits and mental health benefits in the administration
3 of its plan. With regard to both medical-surgical and mental
4 health benefits, it may make determinations of medical necessity
5 and appropriateness, and it may use recognized health care quality
6 and cost management tools, including, but not limited to,
7 utilization review, use of provider networks, implementation of
8 cost containment measures, preauthorization for certain treatments,
9 setting coverage levels including the number of visits in a given
10 time period, using capitated benefit arrangements, using fee-for-
11 service arrangements, using third-party administrators, and using
12 patient cost sharing in the form of copayments, deductibles and
13 coinsurance.

14 (4) The provisions of this subsection shall apply with respect
15 to group health plans for plan years beginning on or after the
16 first day of January, two thousand three. ~~The provisions of this~~
17 ~~section shall cease to be effective on and after the thirty-first~~
18 ~~day of March, two thousand seven, unless further extended by the~~
19 ~~Legislature.~~

20 ~~(5) The commissioner on or before the thirty-first day of~~
21 ~~December, two thousand five, and annually thereafter, shall report~~
22 ~~to the Legislature's joint committee on government and finance and~~
23 ~~the committees on insurance of the respective houses of the~~
24 ~~Legislature regarding the fiscal impact of this subsection on the~~
25 ~~expenses of insurers affected thereby, and which insurers expenses~~

1 ~~of providing mental health benefits have exceeded the percentage~~
2 ~~limits established by this subsection.~~

3 (b) With respect to mental health benefits furnished to an
4 enrollee of a health benefit plan offered in connection with a
5 group health plan, for a plan year beginning on or after the first
6 day of January, one thousand nine hundred ninety-eight, the
7 following requirements shall apply to aggregate lifetime limits and
8 annual limits.

9 (1) Aggregate lifetime limits:

10 (A) If the health benefit plan does not include an aggregate
11 lifetime limit on substantially all medical and surgical benefits,
12 as defined under the terms of the plan but not including mental
13 health benefits, the plan may not impose any aggregate lifetime
14 limit on mental health benefits;

15 (B) If the health benefit plan limits the total amount that
16 may be paid with respect to an individual or other coverage unit
17 for substantially all medical and surgical benefits (in this
18 paragraph, "applicable lifetime limit"), the plan shall either
19 apply the applicable lifetime limit to medical and surgical
20 benefits to which it would otherwise apply and to mental health
21 benefits, as defined under the terms of the plan, and not
22 distinguish in the application of the limit between medical and
23 surgical benefits and mental health benefits, or not include any
24 aggregate lifetime limit on mental health benefits that is less
25 than the applicable lifetime limit;

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

9 (2) Annual limits:

10 (A) If a health benefit plan does not include an annual limit
11 on substantially all medical and surgical benefits, as defined
12 under the terms of the plan but not including mental health
13 benefits, the plan may not impose any annual limit on mental health
14 benefits, as defined under the terms of the plan;

15 (B) If the health benefit plan limits the total amount that
16 may be paid in a twelve-month period with respect to an individual
17 or other coverage unit for substantially all medical and surgical
18 benefits (in this paragraph, "applicable annual limit"), the plan
19 shall either apply the applicable annual limit to medical and
20 surgical benefits to which it would otherwise apply and to mental
21 health benefits, as defined under the terms of the plan, and not
22 distinguish in the application of the limit between medical and
23 surgical benefits and mental health benefits, or not include any
24 annual limit on mental health benefits that is less than the
25 applicable annual limit;

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

9 (3) If a group health plan or a health insurer offers a
10 participant or beneficiary two or more benefit package options,
11 this subsection shall apply separately with respect to coverage
12 under each option.

This bill was recommended for passage by Select Committee on
Insurance Availability and Medical Insurance.

Note: The purpose of the bill is to continue current mental
health parity laws for group insurance plans.

Strike-throughs indicate language that would be stricken from
the present law, and underscoring indicates new language that would
be added.