

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

Form #2

Do Not Mark In This Box

FILED

2004 JUL 21 A 11:12

WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

RULE TYPE: Legislative CITE AUTHORITY: WV Code §§33-2-10 & 33-16D-16(a)(4)

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: 73

TITLE OF RULE BEING PROPOSED: Small Employer Eligibility Requirements

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 August 19³⁰, 2004 AT 4:30 PM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

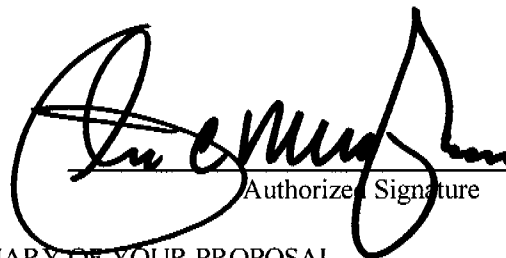
Victor A. Mullins, Associate Counsel

West Virginia Insurance Commission

P.O. Box 50540

Charleston, WV 25305-0540

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



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Department of Revenue
Agency Questionnaire

Re: Legislative Rule to be Filed

SMALL EMPLOYER ELIGIBILITY REQUIREMENTS

TITLE 114, SERIES 73

Question 1: Are regulations required?

Yes. See W. Va. Code Section 33-16D-16(a)(4).

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

The rule is not expected to be controversial. The rule will prevent an employer from manipulating its business structure in order to take advantage of the special group health coverage rates described in W. Va. Code Section 33-16D-16.

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

The rule is custom-drafted.

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?

The Legislature first addressed the availability of health insurance coverage to small employers when it included Article 16D within Chapter 33 of the West Virginia Code. In 2004, Section 16 was added to Article 16D to better facilitate the offering of a health benefit plan to small employers. Because the health benefit plan offering is one at reduced rates compared to the rates being offered in the regular market, it was anticipated by the Legislature that some employers may attempt to manipulate their business structure so that they would fall within the definition of "small employer" and thus be eligible to purchase the health benefit plan described in Section 16. Accordingly, the Legislature has directed that the Insurance Commissioner promulgate a rule to prevent such manipulation by employers. The proposed rule is a result of that mandate.

Insurance Commissioner
Legislative Rule
Title 114, Series 73

SMALL EMPLOYER ELIGIBILITY REQUIREMENTS

TITLE 114, SERIES 73

BRIEF SUMMARY OF RULE

This rule is to facilitate the offering of small employer accident and sickness insurance policies by any licensed carrier that accesses a health care provider network to deliver services, including health maintenance organizations, prepaid limited health services organizations, hospital service corporations, medical service corporations, dental service corporations, health service corporations and health care corporations. More specifically, the rule is intended to prevent an employer from manipulating its business structure in order to take advantage of the special group coverage rates described in W. Va. Code §33-16D-16.

Insurance Commissioner
Legislative Rule
Title 114, Series 73

SMALL EMPLOYER ELIGIBILITY REQUIREMENTS

TITLE 114, SERIES 73

STATEMENT OF CIRCUMSTANCES

The Legislature first addressed the availability of health insurance coverage to small employers when it included Article 16D within Chapter 33 of the West Virginia Code. In 2004, Section 16 was added to Article 16D to better facilitate the offering of a health benefit plan to small employers. Because the health benefit plan offering is one at reduced rates compared to the rates being offered in the regular market, it was anticipated by the Legislature that some employers may attempt to manipulate their business structure so that they would fall within the definition of "small employer" and thus be eligible to purchase the health benefit plan described in Section 16. Accordingly, the Legislature is requiring the Insurance Commissioner to promulgate a rule to prevent such manipulation by employers.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Small Employer Eligibility Requirements
Title 114, Series 73

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

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:

The rule will have no additional fiscal impact upon state, local or federal government.

3. Objectives of these rules:

These rules are intended to facilitate the offering of small employer accident and sickness policies by any licensed carrier that accesses a health care provider network to deliver services, including health maintenance organizations, prepaid limited health services organizations, hospital service corporations, medical service corporations, dental service corporations, health service corporations and health care corporations.

Rule Title: Small Employer Eligibility Requirements
Title 114, Series 73

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.

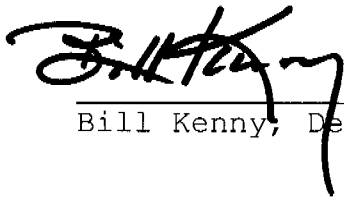
This rule should have no economic impact on political subdivisions. It will only have an economic impact on certain insurance companies or their customers to the extent that the rule facilitates the offering and issuance of a special health benefit plan to small employers. The rule should also benefit small employers by facilitating the offering of group health coverage at reduced prices, thus enabling some small employers to provide coverage to their employees when they have been unable to do so in the past.

C. Economic Impact on Citizens/Public at Large.

There could be a positive economic impact on citizens or the public at large as a result of the promulgation of this rule, to the extent that it allows insurance companies to offer and issue a special health benefit plan to small employers.

Date: July 21, 2004

Signature of Agency Head or Authorized Representative



Bill Kenny, Deputy Commissioner

114CSR73

WEST VIRGINIA LEGISLATIVE RULE

INSURANCE COMMISSIONER

SERIES 73

SMALL EMPLOYER ELIGIBILITY REQUIREMENTS

Section

- 114-73-1. General.
- 114-73-2. Definitions.
- 114-73-3. Eligibility of Small Employers.
- 114-73-4. Enforcement.

TITLE 114
WEST VIRGINIA LEGISLATIVE RULE

FILED

INSURANCE COMMISSIONER

2004 JUL 21 A 11: 12

SERIES 73
SMALL EMPLOYER ELIGIBILITY REQUIREMENTS

WEST VIRGINIA
SECRETARY OF STATE

§114-73-1. General.

1.1. Scope. -- The purpose of this rule is to facilitate the offering of a health benefit plan under W. Va. Code §33-16D-16 by any licensed carrier that accesses a health care provider network to deliver services, including health maintenance organizations, prepaid limited health services organizations, hospital service corporations, medical service corporations, dental service corporations, health service corporations and health care corporation, and to prevent manipulation by small employers of the criteria for determining eligibility to purchase a health benefit plan covered by W.Va. Code §33-16D-16.

1.2. Authority. -- This rule is promulgated pursuant to the authority of W. Va. Code §§33-2-10 and 33-16D-16(a)(4).

1.3. Filing Date. --

1.4. Effective Date. --

§114-73-2. Definitions.

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

2.2. "Health benefit plan" means a plan as defined in W. Va. Code §33-16D-1a(h) and offered by a carrier at rates approved by the Commissioner pursuant to W. Va. Code §33-16D-16.

2.3. "Small employer" means employer as defined in W. Va. Code §33-16D-2(r).

2.4. "Carrier" means any health insurer, as defined in W. Va. Code §33-16D-2(s), that offers a health benefit plan to small employers at rates approved by the Commissioner pursuant to W. Va. Code §33-16D-16.

§114-73-3. Eligibility of Small Employers.

3.1. A small employer is eligible to purchase a health benefit plan subject to the following conditions:

Insurance Commissioner
Legislative Rule
Title 114, Series 73

a. On or before December 11, 2004, a small employer is eligible to purchase a health benefit plan if the small employer has not provided health care coverage for its employees at any time during a period beginning December 11, 2003 through the date on which the health benefit plan is purchased.

b. After December 11, 2004, a small employer is eligible to purchase a health benefit plan if the small employer has not provided health care coverage for its employees for twelve consecutive months prior to obtaining the health benefit plan.

c. The small employer will pay at least fifty percent (50%) of individual employee coverage for its eligible employees.

d. Every small employer seeking to obtain a health benefit plan must furnish to the carrier an Affidavit, in a form acceptable to the Commissioner, from which the carrier may verify the eligibility of the small employer. A copy of the affidavit must be filed with the Commissioner. The provisions contained in the Affidavit shall include but not be limited to the following:

1. As applicable, a representation that the small employer has never provided health care coverage for its employees or the date on which the small employer last provided health care coverage for its employees.

2. For an employer that was in existence for all of the preceding calendar year, the average number of employees that were employed during the preceding calendar year and the number of employees employed on the first day of the small employer's group health plan year.

3. A representation that the majority of eligible employees are employed in West Virginia or, if no state contains a majority of eligible employees, that the primary business location of the small employer is in West Virginia.

4. A representation that the small employer is actively engaged in business in the state of West Virginia.

5. A representation that the small employer was not formed for the purpose of securing health benefits coverage under W. Va. Code §33-16D-16.

6. A disclosure of the true and accurate name(s) of the business entity, including but not limited to DBAs and trade names.

**Insurance Commissioner
Legislative Rule
Title 114, Series 73**

7. As applicable, a disclosure of the following changes to the small employer if the changes occurred after January 1, 2004:

- A. Any business name changes;
- B. Amendments to or restatement of the articles of incorporation;
- C. Reincorporations;
- D. Mergers with other businesses;
- E. Dissolutions;
- F. Withdrawals;
- G. Reinstatements;
- H. Conversions; and
- I. Any other changes relating to the structure, ownership or governance of the small employer.

Copies of documents associated with these disclosures must be provided to the carrier by attachment to the Affidavit.

§114-73-4. Enforcement.

4.1. Suspected violations of this rule may be referred to the Commissioner's fraud unit pursuant to W. Va. Code §33-43-1 et seq. for investigation and other actions authorized thereunder.