

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

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Filing Date

FILED

2004 JUL 21 A 11:12

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

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

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: 73

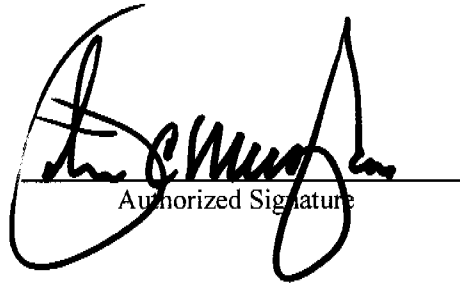
TITLE OF RULE BEING PROPOSED: Small Employer Eligibility Requirements

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:

PLEASE SEE ATTACHED

Use additional sheets if necessary


Authorized Signature

FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY:

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 an emergency rule to prevent such manipulation by employers. The proposed rule is a result of that mandate.

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: July 21, 2004

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: Small Employer Eligibility Requirements
(TITLE 114, SERIES 73)

1. Date of Filing:

July 21, 2004

2. Statutory authority for promulgating emergency rule:

West Virginia Code § 33-16D-16(a)(4).

3. Date of filing of proposed legislative rule:

July 21, 2004

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

The emergency rule adds a new series, Series 73, to the Insurance Commission rules (Title 114 of the Code of State Rules). The rule is new.

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.

See response to Question #8.

Small Employer Eligibility Requirements
(TITLE 114, SERIES 73)
EMERGENCY

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.**

The emergency rule is not being promulgated in order to comply with a time limit established pursuant to a federal statute or regulation.

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

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 an emergency rule to prevent such manipulation by employers. The proposed emergency rule is a result of that mandate.

Insurance Commissioner
Emergency Rule
Title 114, Series 73

SMALL EMPLOYER ELIGIBILITY REQUIREMENTS

TITLE 114, SERIES 73

BRIEF SUMMARY OF EMERGENCY RULE

This emergency 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
Emergency 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 an emergency rule to prevent such manipulation by employers. The proposed rule is a result of that mandate.

APPENDIX B

FISCAL NOTE FOR PROPOSED EMERGENCY RULES

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

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
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 Emergency 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 EMERGENCY 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 EMERGENCY RULE

FILED

INSURANCE COMMISSIONER

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SERIES 73
SMALL EMPLOYER ELIGIBILITY REQUIREMENTS

OFFICE OF 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 corporations, 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
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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.

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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.