

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

Form #4

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FILED

2004 DEC 20 A 10:00

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY: WV Code §§33-2-10 and 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

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

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

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INSURANCE COMMISSIONER

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SERIES 73
SMALL EMPLOYER ELIGIBILITY REQUIREMENTS

OFFICE 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 the disclosures listed in subparagraphs A through I of this paragraph 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.



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Legal Division

BOB WISE
Governor

JANE L. CLINE
Insurance Commissioner

December 20, 2004

HAND DELIVERED

Ms. Judy Cooper, Director
Administrative Law Division
Office of Secretary of State
State Capitol
Charleston, West Virginia 25305

FILED
2004 DEC 20 A 9:59
OFFICE WEST VIRGINIA
SECRETARY OF STATE

RE: SERIES 71 - INSURANCE FRAUD PREVENTION
SERIES 73 - SMALL EMPLOYER ELIGIBILITY REQUIREMENTS

Dear Judy:

Please find attached one (1) copy of the following for filing:

- 1) Notice of a Rule Modification of a Proposed Rule and Consent of the Department of Revenue Acting Cabinet Secretary to Proposed Rule; and
- 2) The proposed rule with modifications.

Please contact me if further information is required.

Sincerely,

Mary Jane Pickens
General Counsel

MJP/jz
Attachments