



OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

Betty Ireland
Secretary of State

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

August 18, 2006

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Insurance Commissioner

RULE: New, 114CSR78, Individual Limited Health Benefits Plan

DATE FILED AS AN EMERGENCY RULE: August 10, 2006

DECISION NO. 17-06

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.


BETTY IRELAND
Secretary of State

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EMERGENCY RULE DECISION
(ERD 17-06)

AGENCY: Insurance Commissioner
RULE: New, 114CSR78, Individual Limited Health Benefits Plans
FILED AS AN EMERGENCY RULE: August 10, 2006

- par. 1 The Insurance Commissioner (Commissioner) has filed the above new rule as an emergency rule.
- par. 2 W. Va. Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Commissioner filed this emergency rule with supporting documents with the Secretary of State August 10, 2006 and with the LRMRC August 10, 2006.
- par. 7 It is the determination of the Secretary of State that the Commissioner has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- W. Va. Code §33-15D-8 reads:

§33-15D-8. Emergency rules authorized.

The commissioner shall promulgate emergency and legislative rules under the provisions of article three, chapter twenty-nine-a of this code on or before the first day of September, two thousand six, to prescribe requirements regarding ratemaking, which may include rules establishing loss ratio standards for individual plans; to place further limitations on the eligibility of individuals; to determine what medical treatments, procedures and related health services benefits must be included in such individual plans; and to provide for any

other matters deemed necessary to further the intent of this article. In determining what medical treatments, procedures and related health services benefits must be included in such plans, the commissioner shall consider their effectiveness in improving the health status of individuals, their impact on maintaining and improving health and on reducing the unnecessary consumption of health care services and their impact on the affordability of health care coverage.

par. 9 It is the determination of the Secretary of State that the Commissioner has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Commissioner are as follows:

H.B. 4021, which was enacted during the 2006 regular legislative session, provides that the Insurance Commissioner "shall promulgate emergency rules (for individual limited health benefits plans). . . to prescribe requirements regarding ratemaking, which may include rules establishing loss ratio standards for individual plans; to place further limitations on the eligibility of individuals; to determine what medical treatments, procedures and related health services benefits must be included in such individual plans; and to provide for any other matters deemed necessary to further the intent of this article." (W.Va. Code §33-15D-8) This emergency rule is being proposed in order to meet the requirements of this newly enacted code section.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . mandated by WV Code.

par. 14

This decision shall be cited as Emergency Rule Decision 17-06 or ERD 17-06 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Insurance Commissioner, the Attorney General and the Legislative Rule Making Review Committee.


BETTY IRELAND
Secretary of State

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