

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In this Box
FILED

2006 JUL 27 P 3: 28

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY WV Code §§33-2-10 & 33-15D-7

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

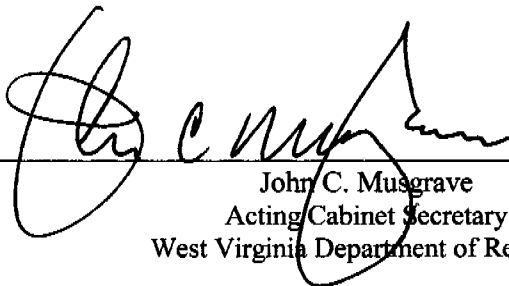
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 78

TITLE OF RULE BEING PROPOSED: Individual Limited Health Benefits Plans

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



John C. Musgrave
Acting Cabinet Secretary
West Virginia Department of Revenue

#5.60

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 27, 2006

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

LEGISLATIVE RULE TITLE: Individual Limited Health Benefits Plans
Title 114, Series 78 .

1. Authorizing statute(s) citation:

WV Code §§33-2-10 & 33-15D-7

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 5, 2006 - Comment Period.

b. What other notice, including advertising, did you give of the hearing?

None.

c. Date of Public Hearing(s) or Public Comment Period ended:

Comment period ended July 5, 2006.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

**e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)**

July 27, 2006

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)**

Charley Dunn, Associate Counsel
West Virginia Insurance Commission
Legal Division
P.O. Box 50540
Charleston, WV 25305-0540
Phone: (304) 558-6279, Ext. 1154
Fax: (304) 558-1362
E-mail: charley.dunn@wvinsurance.gov

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)**

Same.

- 3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation: N/A**

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.**

N/A

- b. Date of hearing or comment period:**

N/A

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?**

N/A

- d. Attach findings and determinations and reasons:**

N/A

Insurance Commissioner
Title 114, Series 78

ATTACHMENT TO QUESTION 2 (d):

A. Subsection 2.1.

A comment was received from America's Health Insurance Plans suggesting that language be included to clarify that the rule does not apply to excepted benefits as defined in W. Va. Code § 33-16-1a. That suggestion is adopted as conforming to statute.

B. Subsection 3, 4, and 5.

A comment was received from America's Health Plans suggesting that changes be made to use the statutory phrase "individual limited health benefits plans" consistently. That suggestion is adopted as conforming to statute.

C. Subsections 6.2a and b, 6.3.

A comment was received from the West Virginia HMO Association suggesting that "emergency care", "inpatient care" and "prescriptive drugs" not be required as mandatory benefits. This recommendation is not adopted as benefits objected to fulfill the legislature's prescription that the limited benefits program provide basic and preventive care.

D. Subsection 5.

A comment was received from America's Health Insurance Plans suggesting that this subsection restate for clarification the eligibility language set forth in § 33-15D-2 of the W. Va. Code and expressly permitting individual underwriting a twelve month pre-existing conditions exclusionary period. These recommendations are adopted as conforming to the statute.

A comment was received from America's Health Insurance Plans suggesting that insurers not be required to gather information regarding eligibility on renewal insofar as the product will be guaranteed renewable. This recommendation is adopted.

**America's Health
Insurance Plans**

601 Pennsylvania Avenue, NW
South Building
Suite Five Hundred
Washington, DC 20004

202.778.3200
www.ahip.org



July 5, 2006

Charles Dunn
Associate Counsel
Offices of the Insurance Commissioner
PO Box 50540
Charleston, WV 25305-0540

**RECEIVED
LEGAL DIVISION**

JUL 05 2006

WV INSURANCE COMMISSION

Dear Mr. Dunn,

On behalf of America's Health Insurance Plans (AHIP), we appreciate the opportunity to comment on the proposed *Individual Limited Health Benefit Plans Regulation*, codified at WVIN ADC § 114-78-1, et. seq. AHIP is the national trade association representing nearly 1,300 member companies providing health insurance coverage to more than 200 million Americans.

We appreciate the efforts of the West Virginia Office of the Insurance Commissioner (OIC) to promulgate regulations in accordance with the requirements established under H.B. 4021 that was passed during the 2006 legislative session. This legislation authorized the establishment of individual limited health benefits plans that are exempt from state mandated benefits and other regulatory requirements, including but not limited to premium tax requirements, to expand coverage options for West Virginia consumers. Please accept this correspondence in response to your request for comments from interested parties on this proposal. For your ease of reference, our suggested deletions are highlighted with ~~striketrough text~~ and our requested additions are highlighted in underlined text.

Guarantee Issue Requirements

An important element of the key provisions of the implementing legislation, (H.B. 4021 (2006), codified at Article 15D) is the applicability of guaranteed issue requirements to these plans, notably the rules established under West Virginia Code §33-15-2b(a). We note that in order for the guaranteed issue provision found at §33-15-2b(a) to not apply to individual limited health benefits plans offered under this article, the Secretary of the United States Department of Health and Human Resources (Secretary) must have found that the state has implemented an acceptable alternative mechanism. This finding is a key part of this legislation, and without it, insurers may be reluctant to offer this type of coverage in that it limits their flexibility to underwrite these products. In order to maximize the consumer options contemplated by H.B. 4021, we recommend that the State pursue this finding from the Secretary.



Applicability

It is our understanding that the new Article 15D of the West Virginia Code only applies to individual limited health benefits plans and does not extend to policies providing “excepted benefits” as defined in West Virginia Code §33-16-1a(f) or policies providing coverage as set forth in West Virginia Code §33-15-2g. For purposes of clarification, we would suggest the following amendment to Section 2 of the proposed regulation:

2.1 This rule applies to all individual limited health benefit plans issued pursuant to article fifteen-d, chapter thirty-three of the West Virginia Code and to all insurers offering such plans as of the effective date of this rule. This rule does not apply to “excepted benefit” policies as defined in West Virginia Code §33-16-1a(f) nor does it apply to accident and sickness insurance covering those types of policies set out in West Virginia Code § 33-15-2g.

Individual Limited Health Benefit Plans

The term established under H.B. 4021 for this new type of coverage is “individual limited health benefits plans.” We note that the proposed regulations use variations of this term which could lead to confusion in the industry and marketplace. Prior to the enactment of this legislation, many insurers offered “limited benefit” policies that provide limited health insurance coverage for specific categories of care and/or up to a limited maximum benefit. We therefore respectfully request that the regulations be amended to consistently refer to the term that was used in the statute - “individual limited health benefits plans” – to avoid confusion and clarify the scope of the regulation. As a result, we submit the following amendments to §114-78-3 – §114-78-5:

§ 114-78-3: Rate Filing

3.1 All of the provisions of 114CSR26 apply to individual limited health benefits plans except 114CSR26-1.

§114-78-4: Form Filing

4.1 All of the provisions of 114 CSR67 apply to individual limited health benefits plans.

§114-78-5. Eligibility

5.1 An insurer issuing individual limited health benefits plans ~~individual health insurance policies~~ shall, as part of the application process and also as part of the renewal process, require the applicant to provide evidence of eligibility in a form satisfactory to the



Insurance Commissioner and it shall retain the evidence of eligibility during the entire time the policy remains in effect.

Eligibility

Section 5.1 of the proposed regulation requires insurers to determine the eligibility of an individual at renewal and, therefore, presumably allows for the non-renewal of coverage should the individual no longer meet the eligibility requirements. We respectfully note that West Virginia Code §33-15-2d imposes a guaranteed renewable requirement on individual policies. The failure to comply with eligibility requirements is not included as a reason for non-renewal under this statute. Therefore, we question why an insurer should be required to gather evidence of eligibility upon renewal. Assuming that an insurer may non-renew based on the eligibility of the individual, the only eligibility criteria that would seem to apply would be the insured's age and/or if the individual's employer offers health care coverage. Given this apparent conflict, we request that the OIC provide further clarification on the guidelines for non-renewal of individual limited health benefits plans.

We also suggest the inclusion of the eligibility requirements established under H.B. 4021 for individual limited health benefits plans. This would follow the same format for the eligibility section that is proposed under the draft *Group Limited Health Benefits Plans Regulation* and would clarify the initial eligibility requirements and accompanying insurer responsibilities. We therefore suggest the inclusion of the following new subsections:

§114-78-5. Eligibility

NEW 5.2 An individual limited health benefits plan may only be offered to an adult between the ages of eighteen and sixty-four, inclusive, who:

a. Has not had a health benefit plan covering him or her for at least the prior twelve consecutive months: Provided, That such a plan may not be offered to an employee of an employer that offers a health benefits plan to its employees unless that employee does not qualify for coverage under such employer plan; or

b. Has lost coverage due to a qualifying event. A qualifying event shall include loss of coverage due to: (i) Emancipation and resultant loss of coverage under a parent's or guardian's plan; (ii) divorce and loss of coverage under the former spouse's plan; (iii) termination of employment and resultant loss of coverage under an employer group plan except for loss of employment for gross misconduct; or (iv) involuntary termination of coverage under a group health benefit plan except for termination due to nonpayment of premiums or fraud by the insured.

July 5, 2006
Page 4



NEW 5.3 Every individual limited health benefits plan may limit eligibility on the basis of health status and an individual who has been treated for a health condition in the prior twelve months may have that condition excluded from coverage for the first twelve months of the policy term.

Thank you for the opportunity to provide comments on this proposed regulation. We look forward to continuing to work with the OIC on this matter. Please feel free to contact me with any questions or concerns at 202.778.1147 or via e-mail at bpelovitz@ahip.org.

Sincerely,

A handwritten signature in cursive script that reads "Betsy M. Pelovitz".

Betsy M. Pelovitz
Regional Director
America's Health Insurance Plans

cc: Randy Cox; Spilman Thomas & Battle, PLLC



SPILMAN THOMAS & BATTLE, PLLC

ATTORNEYS AT LAW

(304) 340-3829
tcox@spilmanlaw.com

July 5, 2006

HAND-DELIVERY

Charles Dunn, Esq.
Associate Counsel
Offices of the Insurance Commissioner
1124 Smith Street
Charleston, WV 25301

RECEIVED
LEGAL DIVISION

JUL 05 2006

WV INSURANCE COMMISSION

RE: Proposed Rule 114 CSR 78

Dear Mr. Dunn,

On behalf of the West Virginia HMO Association ("WV HMO Assoc."), we appreciate the opportunity to comment on proposed "Individual Limited Health Benefit Plans," as set forth in proposed 114 CSR 78. For your ease of reference, our suggested deletions are highlighted with ~~strike-through text~~ and proposed additions are highlighted in underlined text.

114-78-6 Benefits

We have concerns about the breadth of the benefits which this rule requires as a minimum for these policies. W.Va. Code § 33-15D-1 provides in pertinent part as follows: "It is the intent of the Legislature to introduce flexibility in the design of health insurance plans to allow insurers to offer basic benefits, including preventive and primary case services, at affordable prices." These are the only references to the types of benefits which are required to be offered by these plans.

We would recommend that 6.2a. and b., "emergency care" and "inpatient care" and 6.3, "prescription drugs," not be required as mandatory benefits.

By so amending the rule, it would allow the health insurance industry to offer a plan to low income individuals which in many ways would be comparable to the clinic based program which was also established by HB 4021. Further, this amendment would be consistent with Article 15E which only requires preventive care and primary care benefits, and also allows insurers the flexibility of designing new products that are affordable for low income individuals. Our amendment to this rule would be as follows:

Charles Dunn, Associate Counsel
Offices of the WV Insurance Commissioner
July 5, 2006
Page 2

6.2. Every policy issued hereunder shall provide benefits for at least the following services:

- a. ~~Emergency care.~~
- b. ~~Hospital benefits, including physician services while in the hospital.~~
- ea. Outpatient benefits, including lab and diagnostics.
- db. Preventive care benefits.
- ec. Primary care benefits.

~~6.3. Every policy that does not cover prescription benefits as part of its basic coverage shall offer prescription benefits coverage as an option.~~

Thank you for the opportunity to provide comments on this proposed regulation.

Sincerely,



T. Randolph Cox, Counsel
West Virginia HMO Association

TRC/lb;424266v2

Insurance Commissioner
Legislative Rule
Title 114, Series 78

INDIVIDUAL LIMITED HEALTH BENEFIT PLANS

TITLE 114, SERIES 78

BRIEF SUMMARY OF RULE

H.B. 4021 (RS 2006) authorized the Insurance Commissioner to approve individual limited benefit health insurance plans which are exempt from certain state mandated benefit requirements. The plans are available only to individuals who have not had health insurance coverage in the past twelve months. Rates and forms are subject to the commissioner's approval and rules regarding ratemaking, definition of eligible individuals, determination of benefits and other matters are authorized. This rule fulfills the commissioner's responsibility in that regard.

Insurance Commissioner
Legislative Rule
Title 114, Series 78

INDIVIDUAL LIMITED HEALTH BENEFIT PLANS

TITLE 114, SERIES 78

STATEMENT OF CIRCUMSTANCES

H.B. 4021, which was enacted during the 2006 regular legislative session, specifically provided that the Insurance Commissioner shall promulgate emergency rules ... "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." An emergency rule mirroring this legislative rule will be filed, but it is necessary to file this legislative rule now in order to allow it to be approved by the 2007 Legislature and thereby avoid a lapse in effectiveness when the emergency rule expires after fifteen (15) months.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Individual Limited Health Benefit Plans (Title 114 - Series 78)
 Type of Rule: X Legislative Interpretive Procedural Emergency
 Agency: Insurance Commissioner
 Address: Post Office Box 50540
1124 Smith Street, Greenbrooke Building
Charleston, West Virginia 25305-0540
 Phone Number: (304) 558-0401 Email:

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The Insurance Commission believes it can perform its duties under this legislation using its existing resources.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	None	None	None
Personal Services	None	None	None
Current Expenses	None	None	None
Repairs & Alterations	None	None	None
Assets	None	None	None
Other	None	None	None
2. Estimated Total Revenues	None	None	None

Rule Title: Individual Limited Health Benefit Plans (Title 114 - Series 78)

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

The Insurance Commission is already engaged in approving rates and forms for health insurance plans and it can perform the additional duties required by this legislation in with its existing resources. The plans authorized in this legislation are exempt from premium tax and so they will not contribute any additional revenues.

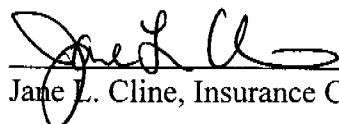
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

None.

Date: July 27, 2006

Signature of Agency Head or Authorized Representative



Jane L. Cline, Insurance Commissioner

114CSR78

**LEGISLATIVE RULE
INSURANCE COMMISSIONER**

**SERIES 78
INDIVIDUAL LIMITED HEALTH BENEFITS PLANS**

Section

- 114-78-1. General.
- 114-78-2. Applicability.
- 114-78-3. Rate Filing.
- 114-78-4. Form Filing.
- 114-78-5. Eligibility.
- 114-78-6. Benefits.
- 114-78-7. Penalties and Enforcement.
- 114-78-8. Severability.

114CSR78

FILED

LEGISLATIVE RULE
INSURANCE COMMISSIONER

2007 JUL 27 P 3:29

SERIES 78
INDIVIDUAL LIMITED HEALTH BENEFITS PLANS

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§114-78-1. General.

1.1. Scope. -- The purpose of this legislative rule is to establish requirements for information and data to be provided with the filing of rates and rate adjustments and forms for individual limited health benefit plans, to establish minimum benefits for such plans and to define eligibility for individuals to obtain coverage under the plans.

1.2. Authority. -- W. Va. Code §§33-2-10 and 33-15D-7.

1.3. Filing Date. --

1.4. Effective Date. --

§114-78-2. Applicability.

2.1. This rule applies to all individual limited health benefit plans issued pursuant to article fifteen-d, chapter thirty-three of the West Virginia Code and to all insurers offering such plans as of the effective date of this rule.

§114-78-3. Rate Filing.

3.1. All of the provisions of 114CSR26 apply to individual limited benefit plans except 114CSR26-1.

§114-78-4. Form Filing.

4.1. All of the provisions of 114CSR67 apply to individual limited benefits plans.

§114-78-5. Eligibility.

5.1. An insurer issuing limited benefit individual health insurance policies shall, as part of the application process require the applicant to provide evidence of eligibility in a form satisfactory to the Insurance Commissioner and it shall retain the evidence of eligibility during the entire time the policy remains in effect.

5.2 An individual limited health benefits plan may only be offered to an adult between the

**Insurance Commissioner
Legislative Rule
Title 114, Series 78**

ages of eighteen and sixty-four, inclusive, who:

a. Has not had a health benefit plan covering him or her for at least the prior twelve consecutive months: Provided, That such a plan may not be offered to an employee of an employer that offers a health benefits plan to its employees unless that employee does not qualify for coverage under such employer plan; or

b. Has lost coverage due to a qualifying event. A qualifying event shall include loss of coverage due to: (i) emancipation and resultant loss of coverage under a parent's or guardian's plan; (ii) divorce and loss of coverage under the former spouse's plan; (iii) termination of employment and resultant loss of coverage under an employer group plan except for loss of employment for gross misconduct; or (iv) involuntary termination of coverage under a group health benefit plan except for termination due to nonpayment of premiums or fraud by the insured.

5.3. Every individual limited health benefits plan may limit eligibility on the basis of health status and an individual who has been treated for a health condition in the prior twelve months may have that condition excluded from coverage for the first twelve months of the policy term.

§114-78-6. Benefits.

6.1. Every policy issued hereunder shall have an annual maximum benefit of at least three thousand dollars per covered person. The annual maximum benefit may hereafter be changed by order of the Insurance Commissioner.

6.2. Every policy issued hereunder shall provide benefits for at least the following services:

- a. Emergency care.
- b. Hospital benefits, including physician services while in the hospital.
- c. Outpatient benefits, including lab and diagnostics.
- d. Preventive care benefits.
- e. Primary care benefits.

6.3. Every policy that does not cover prescription benefits as part of its basic coverage

**Insurance Commissioner
Legislative Rule
Title 114, Series 78**

shall offer prescription benefits coverage as an option.

§114-78-7. Penalties and Enforcement.

7.1. Insurers issuing policies hereunder shall be subject to the examination and investigation powers of the Insurance Commissioner set forth in article two, chapter thirty-three of the West Virginia Code, and the enforcement provisions of W. Va. Code §33-2-11. Insurers issuing policies hereunder shall be subject to the provisions of article eleven, chapter thirty-three of the West Virginia Code.

§114-78-8. Severability.

8.1. If any provision of this legislative rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected.