



**Betty Ireland**  
Secretary of State

OFFICE OF THE SECRETARY OF STATE  
STATE OF WEST VIRGINIA

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Office of the  
Secretary of State

May 28, 2008

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Office of the Insurance Commissioner

RULE: New Rule, 114CSR83, Discount Medical Plan organizations and Discount Prescription Drug Plan Organizations

DATE FILED AS AN EMERGENCY AMENDMENT: June 13, 2008

DATE ORIGINALLY FILED AS AN EMERGENCY RULE: May 16, 2008

DECISION NO. 5-08

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 5-08)

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RULE: New Rule, 114CSR83 Discount Medical Plan Organizations and Discount Prescription Drug Plan Organizations  
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- 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 May 16, 2008 and with the LRMRC May 16, 2008.
- 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 §33-15E-4(b) reads:

*b) The Commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, as well as emergency rules in accordance with section fifteen of said article, setting forth the licensing requirements. These rules shall include, at a minimum:*

- (1) All necessary forms and other information considered necessary and required by the Commissioner for processing the license application;*
- (2) Applicable fees;*
- (3) Reciprocity requirements;*
- (4) Time frames for the application and approval process;*
- (5) Conditions of approval of the license application or denial of the license;*
- (6) Renewal process;*
- (7) Notice requirements; and*
- (8) Any other provisions considered necessary by the Commissioner to effectuate the provisions of this article.*

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:

The emergency rule establishes standards for Discount Medical Plan Organizations to protect consumers from unfair or deceptive marketing, sales or enrollment practices. The emergency amendment is to correct language in the emergency rule filed May 16, 2008. The language, found at 114CSR 83 §2.1 was placed in the emergency rule to allow a period of time prior to the licensing requirement deadline for the Discount Medical Plan Organization & Discount Prescription Drug Plan Organizations to submit applications & the Insurance Commission to process applications for licensure. The current language suggests that Discount Medical Plan Organizations must currently have a license & implies that after July 1, 2008 a Discount Medical Plan Organization may operation without a license. This is not the intended purpose of this subsection. The intent was to give Discount Medical Plan Organizations a grace period to comply with the licensing requirement deadline 7 that after July 1, 2008 a Discount Medical organization would not be able to operate in this state without first obtaining a license from the Insurance Commission.

The amendment will change the word "prior" to the word "after" so as to not suggest that a Discount Medical Plan organization may operate after July 1, 2008 without

a license.

The second revision will clarify that provisional licenses are only intended to be available to entities that have applied prior to July 1 but which have not yet been acted upon by the Commissioner.

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). . . "to prevent substantial harm to the public interest"

par. 14 This decision shall be cited as Emergency Rule Decision 5-08 or ERD 5-08 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Office of the Insurance Commissioner, the Attorney General and the Legislative Rule Making Review Committee.

  
BETTY IRELAND  
Secretary of State

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