WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION

Form #2

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2009 MAY 26 PM 3: 12

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

RULE TYPE: Legislative CITE AUTHORITY WV Code §33-2-10 and 33-16F-10

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: 88

TITLE OF RULE BEING PROPOSED: WV Affordable Health Care Plan

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON 6/25/09 AT 5:00 PM. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Timothy R. Murphy, Associate Counsel
WV Offices of the Insurance Commissioner
P.O. Box 50540
Charleston, WV 25325-0540
Timothy.Murphy@wvinsurance.gov

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Virgil T. Helton
Cabinet Secretary
West Virginia Department of Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Insurance Commissioner
Legislative Rule
Title 114, Series 88

WV AFFORDABLE HEALTH CARE PLAN
TITLE 114, SERIES 88

BRIEF SUMMARY OF RULE

The affordable health care plan program, created in 2009 by the Legislature through SB 552, is designed to encourage the development of low cost insurance plans, both group and individual, that emphasize coverage of primary and preventive care. Under the bill, the Insurance Commissioner must invite licensed insurers to submit proposals for low cost plans that must meet certain minimum criteria such as the inclusion of a few of the statutory mandates (immunizations, mammograms, pap smears, HPV tests and colorectal exams). The bill also permits the Commissioner to "forbear from applying" any statutory or regulatory requirement in the insurance code (except those sections in articles 15, 16 and 16D of the insurance code specifically listed in the bill as being applicable to these plans) if she finds that the purposes of the bill would be advanced.

This rule (which is not mandated by the bill) is intended to give some additional guidance to insurers that intend to participate in the program. It outlines the required mandated benefits, specifically provides that certain sections will not be applicable to these plans (e.g. filing fees), and provides some general guidance on what must be submitted with the plan proposals (rates and forms, e.g.). It also provides that, unlike other "acts or orders of the Commissioner" (WV Code §33-2-13), decisions on proposals are not appealable by the insurer.

Offices of the Insurance Commissioner
Legislative Rule
Title 114, Series 88

WV AFFORDABLE HEALTH CARE PLAN

TITLE 114, SERIES 88

STATEMENT OF CIRCUMSTANCES

In 2009, the Legislature enacted SB 552 that requires the Insurance Commissioner to work with health insurance companies to develop low cost plans emphasizing primary and preventive care. The bill provides that the Offices of the Insurance Commissioner ("OIC") issue invitations to carriers by 7/1/09 to submit proposals for such plans, each applicant being required to submit 2 plan proposals (and rates), one of which must include catastrophic coverage. Eligibility is limited to individuals who are not eligible for another plan (e.g. Medicaid or an employer group plan) and have not been covered for the last 6 months (unless coverage had been lost due to a qualifying event such as loss of a job). Groups must not have had coverage in the last 6 months.

The bill requires the OIC to issue "guidelines" for OIC review of plan proposals (including the rates) which must be included in the initial invitation for proposals. These guidelines require the OIC to consider the proposals effectiveness in improving/maintaining health and reducing unnecessary consumption of health care services. The guidelines must also ensure that the plans "meet minimum standards for quality and access to care." The bill does not specifically mandate any rules; however, it does *permit* emergency and legislative rules to prescribe ratemaking (including loss ratios), additional eligibility limitations, creditable coverage, required benefits, etc.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: WV Affordable Health Care Plan (Title 114 - Series 88)

Type of Rule: X Legislative ____ Interpretive ____ Procedural ____ Emergency

Agency: WV Offices of the Insurance Commission

Address: Post Office Box 50540
1124 Smith Street, Greenbrooke Building
Charleston, West Virginia 25305-0540

Phone Number: (304) 558-0401 Email: Timothy.Murphy@wvinsurance.gov

Fiscal Note Summary

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

This rule will have no additional fiscal impact upon state government.

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	N/A	N/A	N/A
Personal Services	N/A	N/A	N/A
Current Expenses	N/A	N/A	N/A
Repairs & Alterations	N/A	N/A	N/A
Assets	N/A	N/A	N/A
Other	N/A	N/A	N/A
2. Estimated Total Revenues	N/A	N/A	N/A

Rule Title: WV Affordable Health Care Plan (Title 114 - Series 88)

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

N/A

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.

Date: May 26, 2009

Signature of Agency Head or Authorized Representative

Timothy Murphy, Associate Counsel

TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 88
WV AFFORDABLE HEALTH CARE PLAN

Section

114-88-1. General.

114-88-2. Submission and Evaluation of Proposals.

114-88-3. Eligibility.

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SECRETARY OF STATE

TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 88
WV AFFORDABLE HEALTH CARE PLAN

§114-88-1. General.

1.1. Scope. -- The purpose of this rule is to implement W. Va. Code §33-16F-1 *et seq.* relating to the program created in 2009 by the Legislature (Enr. Com. Sub. for S.B. 552) to encourage the development of affordable alternatives to the health insurance plans currently available in the private market.

1.2. Authority. -- W. Va. Code §§33-2-10 and 33-16F-10.

1.3. Filing Date. --

1.4. Effective Date. --

§114-88-2. Submission and Evaluation of Proposals.

2.1. Any insurer licensed in West Virginia to sell accident and sickness insurance may submit a proposal at any time to participate in the "Affordable Health Insurance Plan" program by submitting an application to the West Virginia Offices of the Insurance Commissioner ("OIC") in the format set forth on the OIC website.

2.2. An application submitted pursuant to this rule must include at least two proposed plans, one of which must include catastrophic coverage and each of which must include prescription drug benefits.

2.3. Any plan approved under this program shall not be considered to be providing major medical or similar comprehensive type coverage.

2.4. Each proposal must include a childhood immunization benefit that includes coverage for the cost of vaccines and their administration for the prevention of polio, measles, mumps, rubella, diphtheria, pertussis, tetanus, hepatitis-b, and haemophilus influenzae-b. This benefit must be included in all policies that cover the children of the insured, shall be available to such children under the age of seventeen, and shall be covered without any deductible, per-visit charge and/or copayment, for the cost of the vaccine, if incurred by the health care provider, and all costs of the administration of vaccines.

2.5. With respect to any policy in which reimbursement or indemnity for laboratory or X-ray services are covered, reimbursement or indemnity may not be denied for any of the following services, and such policy may apply to such benefits the same deductibles, coinsurance

and other limitations as apply to other covered services under the policy:

a. Mammogram -- When performed at the direction of a licensed physician who deems the test medically appropriate and consistent with the current guidelines from the United States Preventive Services Task Force.

b. For women age eighteen and over, a Pap smear (either conventional or liquid-based cytology, whichever is medically appropriate) and a test for the human papilloma virus (HPV) (when medically appropriate), each to be consistent with the current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists.

c. A colorectal cancer examination and laboratory testing for any nonsymptomatic person fifty years of age or older, or a symptomatic person under fifty years of age, that is performed for colorectal cancer screening or diagnostic purposes at the direction of a licensed physician. The tests are an annual fecal occult blood test, a flexible sigmoidoscopy repeated every five years, a colonoscopy repeated every ten years and a double contrast barium enema repeated every five years. A symptomatic person is (i) An individual who experiences a change in bowel habits, rectal bleeding or stomach cramps that are persistent; or (ii) an individual who poses a higher than average risk for colorectal cancer because he or she has had colorectal cancer or polyps, inflammatory bowel disease, or an immediate family history of such conditions.

2.6. Filing fees. Notwithstanding the provisions of W. Va. Code §33-6-34, plan entities are exempt from the payment of fees for filing rates and forms.

2.7. Commissioner's decisions on proposals. Notwithstanding the provisions of W. Va. Code §33-2-13, the Commissioner is not required to grant a hearing or to issue an order in response to a written demand from a plan entity aggrieved by a decision by the Commissioner to refuse to approve a proposed plan.

§114-88-3. Eligibility.

3.1. Proposals may be submitted for employer group plans or any other group that the Commissioner determines would benefit from such a plan.

3.2. Enrollment in any plan approved under this rule is limited to groups that have not been covered under any other group plan in the last six months and to individuals who have not been covered and have not been eligible for coverage under a health insurance plan (other than COBRA coverage) unless coverage in the last six months was lost due to loss of a job, death of or divorce from a covered spouse or termination from a public program due to inability to meet

income or categorical requirements.