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

Form #7

Do not mark in this box
Filing Date

FILED

2009 SEP 16 AM 10: 11

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Offices of the Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY W.Va. Code §33-2-10 and 33-16F-10

EMERGENCY 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 FILED AS AN EMERGENCY: 88

TITLE OF RULE BEING AMENDED: WV Affordable Health Care Plan

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Virgil T. Helton
Cabinet Secretary
West Virginia Department of Revenue

Use additional sheets if necessary

Title 114, Series 88 - Emergency Rule
WV Affordable Health Care Plan

FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY:

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.

The invitation was issued July 2, 2009 http://www.wvinsurance.gov/LinkClick.aspx?fileticket=tij4alWQEgc%3d&tabid=38&mid=725. The rule would provide necessary information for carriers who are considering submitting proposals and rules for OIC's assessment of these proposals.

Department of Revenue
Agency Questionnaire

Re: Emergency Rule to be Filed

WV AFFORDABLE HEALTH CARE PLAN

TITLE 114, SERIES 88

Question 1: Are regulations required?

No

Question 2: Is the rule you are proposing controversial? If yes, what are the pros and the cons?

The rule is not expected to be controversial, though public interest groups may oppose the plans finally approved as inadequate and not worth the cost.

Question 3: Is the rule you are proposing a copy of another state's rule? A model rule? Custom-drafted?

The rule is custom drafted.

Question 4: What are the really important things you think the Secretary of the Department of Revenue should know about this rule and the issues that surround it?

The concept behind the bill (SB 552, 2009 RS) is to encourage the development of low cost health insurance policies by minimizing mandated benefits, streamlining the approval process, eliminating/ reducing fees, reducing marketing costs, etc. The danger is that enrollees may think they are getting standard major medical-type coverage, so the initial disclosures are important.

WV Affordable Health Care Plan
(Title 114, Series 88)
EMERGENCY RULE

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:

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

EMERGENCY RULE TITLE: WV Affordable Health Care Plan
(Title 114, Series 88)

1. **Date of Filing:**

2. **Statutory authority for promulgating emergency rule:**

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

3. **Date of filing of proposed legislative rule:**

   May 26, 2009

4. **Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?**

   The emergency rule adopts new language.

5. **Has the same or similar emergency rule previously been filed and expired?**

   No.

6. **State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety and welfare.**

N/A

7. **If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.**

N/A

8. **State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to public interest.**

The concept behind the bill (SB 552, 2009 RS) is to encourage the development of low cost health insurance policies by minimizing mandated benefits, streamlining the approval process, eliminating/reducing fees, reducing marketing costs, etc. The danger is that enrollees may think they are getting standard major medical-type coverage, so the initial disclosures are important.

Insurance Commissioner
Emergency Rule
Title 114, Series 88

WV AFFORDABLE HEALTH CARE PLAN

TITLE 114, SERIES 88

BRIEF SUMMARY OF EMERGENCY 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.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: ___ Legislative ___ Interpretive ___ Procedural __X__ Emergency

Agency: Offices of the 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.

N/A

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
Equipment	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 emergency rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: _____

Signature of Agency Head or Authorized Representative

_____

Jane L. Cline, Insurance Commissioner

Offices of the Insurance Commissioner
Emergency 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.

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TITLE 114
EMERGENCY 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.

FILED
2009 SEP 16 AM 10: 12
OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE 114
EMERGENCY 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.