



**Natalie E. Tennant**

Secretary of State  
State of West Virginia

Office of the Secretary of State  
Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, West Virginia 25305

Telephone: (304) 558-6000  
Toll Free: 1-866-SOS-VOTE  
Fax: (304) 558-0900  
www.wvsos.com

October 19, 2009

**NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE**

**AGENCY:** Insurance Commissioner

**RULE:** New Rule, 114CSR88, WV Affordable Health Care Plan

**DATE FILED AS AN EMERGENCY RULE:** September 16, 2009

**DECISION NO. 28-09**

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OFFICE OF THE SECRETARY OF STATE  
FILED

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.

**NATALIE E. TENNANT**  
Secretary of State

EMERGENCY RULE DECISION  
(ERD 28-09)

AGENCY: Insurance Commissioner  
RULE: New Rule, 114CSR88, WV Affordable Health Care Plan  
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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 September 16, 2009 and with the LRMRC September 16, 2009.
- 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 §33-2-10 reads:

***§33-2-10. Rules and regulations.***

***(a) The commissioner is authorized to promulgate and adopt rules relating to insurance as are necessary to discharge his or her duties and exercise his or her powers and to effectuate the provisions of this chapter, protect and safeguard the interests of policyholders and the public of this state.***

***(b) The commissioner is authorized to promulgate rules necessary to discharge his or her duties relating to workers' compensation insurance as set forth in chapter twenty-three of***

*this code, which shall be exempt from the provisions of chapter twenty-nine-a, article three of this code, except that these rules shall be filed with the Secretary of State's Office.*

*(c) Prior to assuming regulatory authority over workers' compensation insurance pursuant to article two-c, chapter twenty-three of this code, the commissioner shall review and revise all applicable rules to reflect the assumption of this new regulatory authority: Provided, That all such revisions shall be exempt from the provisions of chapter twenty-nine-a, article three, except that the amended rules shall be filed with the Secretary of State's Office.*

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:

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.

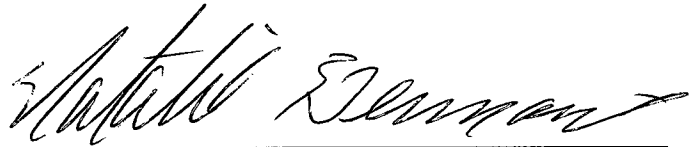
The bill provides that the Offices of the Insurance Commissioner ("OIC") issue invitations to carriers by 7/1/09 to submit proposals for such plans, each applicant being required to submit 2 plan proposals (and rates), one of which must include catastrophic coverage. Eligibility is limited to individuals 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=tij4aIWQEgc%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.

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

par. 14 This decision shall be cited as Emergency Rule Decision 28-09 or ERD 28-09 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.



NATALIE E. TENNANT  
Secretary of State

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