WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

Form #3

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FILED

2004 AUG 26 P 1:24

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Board of Risk and Insurance Management TITLE NUMBER: 115

CITE AUTHORITY: W. Va. Code §§29-12-5(a)(10); 29-12D-2(a)(6); 29-12D-3(c); 29-12D-3(f); 29-12D-3(g).

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: 7

TITLE OF RULE BEING PROPOSED: Patient Injury Compensation Fund

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.

Charles E. Jones Jr.
Authorized Signature

$5.80

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
BOARD OF RISK AND INSURANCE MANAGEMENT

90 MACCORKLE AVENUE SW, SUITE 203
SOUTH CHARLESTON, WV 25303

BOB WISE
GOVERNOR

(304) 766-2646 ADMINISTRATION
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Title 115
Legislative Rule
State Board of Risk and Insurance Management

Series 7
Patient Injury Compensation Fund

CONSENT TO FILING

I, John T. Poffenbarger, Acting Cabinet Secretary to the Department of Administration, do hereby consent to the filing of Title 115, Series 7, titled "Patient Injury Compensation Fund."

7-22-04
Date

for John T. Poffenbarger, Acting Cabinet Secretary
Department of Administration

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: August 27, 2004

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:(*Agency Name, Address & Phone No.*) Board of Risk and Insurance Management
90 MacCorkle Avenue, SW Suite 203
South Charleston, WV 25303

(304) 766-2646

LEGISLATIVE RULE TITLE: Title 115 Series 7

Patient Injury Compensation Fund

1. Authorizing statute(s) citation

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

July 23, 2004

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

Faxed Proposed Rule to: Defense Trial Counsel of WV
West Virginia State Medical Association
West Virginia Hospital Association
West Virginia Trial Lawyers Association

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

August 23, 2004 4:00 p.m.

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

Attached _____ No comments received X

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

August 27, 2004

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

Charles E. Jones, Jr., Executive Director
90 MacCorkle Avenue, SW Suite 203
South Charleston, WV 25303

PH: (304) 766-2646 x100
FX: (304) 766-2653
cjones@wvadmin.gov

g. **<u>IF DIFFERENT</u> 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)

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:

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:

_____

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

_____

d. Attach findings and determinations and reasons:

Attached _____

115 CSR 7

TITLE 115
STATE BOARD OF RISK AND INSURANCE MANAGEMENT

SERIES 7
PATIENT INJURY COMPENSATION FUND

BRIEF SUMMARY OF PROPOSED RULE

The purpose of the proposed rule is to provide for the implementation, administration and operation of the Patient Injury Compensation Fund, codified in Chapter 29, Article 12D of the Code of West Virginia, by the State Board of Risk and Insurance Management. The proposed rule provides for the administration and operation of the Fund, payment of administrative expenses, the procedure for obtaining payment from the Fund for otherwise uncollectible economic damages as the result of the trauma cap and the joint and several liability reforms, the procedure for allocating payments if the Fund does not have sufficient moneys to pay all eligible claims during a fiscal year, the administrative process to determine eligibility and the amount of compensation to be paid, payment of attorneys' fees, and administrative and judicial appeals procedures.

115 CSR 7

TITLE 115
STATE BOARD OF RISK AND INSURANCE MANAGEMENT

SERIES 7
PATIENT INJURY COMPENSATION FUND

STATEMENT OF CIRCUMSTANCES REQUIRING THIS RULE

In 2004, the Legislature enacted House Bill 4740 relating to the establishment, initial funding and operation of a patient injury compensation fund ("PICF"). The bill is codified in Chapter 29, Article 12D of the West Virginia Code (the "Act"). The legislation provides that the PICF be implemented, administered and operated by the State Board of Risk and Insurance Management ("BRIM"). The statute requires BRIM to promulgate certain rules with respect to the administration and operation of the PICF.

BRIM is required to promulgate rules "as it considers necessary or advisable to implement the authority of and discharge the responsibilities conferred and imposed on the board" the Act. W. Va. Code §29-12D-2(a)(6). BRIM is required to prescribe procedures by legislative rule for qualified claimants seeking payment from the fund to follow in order to establish to the Board's satisfaction that the claimant has exhausted all reasonable means to recover from all applicable liability insurance an award of economic damages. W. Va. Code §29-12D-3(c). Rules are needed regarding the pro-ration of payments to qualified claimants if the fund is exhausted in any one year and providing for the carryover of unpaid amounts to subsequent fiscal years. W. Va. Code §29-12-3(g).

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 115 Series 7 Patient Injury Compensation Fund

Type of Rule: X Legislative _____ Interpretive _____ Procedural

Agency: State Board of Risk and Insurance Management

Address: 90 MacCorkle Avenue, SW
Suite 203
South Charleston, WV 25303

1. Effect of Proposed rule:

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST			$15,000	$20,000	$25,000
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

Estimated administrative costs.

3. Objectives of These Rules:

The proposed rule provides for the administration and operation of the Fund, payment of administrative expenses, the procedure for obtaining payment from the Fund.

Rule Title: Title 115 Series 7 Patient Injury Compensation Fund

4. Explanation of Overall Economic Impact of Proposed Rule:

   A. Economic Impact on State Government:

      None

   B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

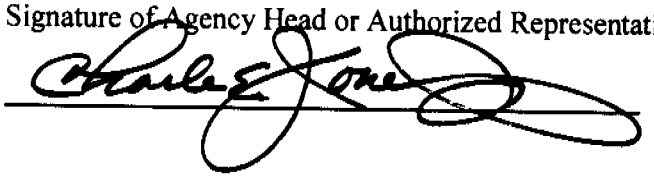
      None

   C. Economic Impact on Citizens/Public at Large.

      None

Date: July 23, 2004

Signature of Agency Head or Authorized Representative:



TITLE 115
LEGISLATIVE RULE
STATE BOARD OF RISK AND INSURANCE MANAGEMENT

SERIES 7
PATIENT INJURY COMPENSATION FUND

§115-7-1. General.

1.1. Scope -- The scope of this rule involves implementation, administration and operation of the patient injury compensation fund by the state board of risk and insurance management.

1.2. Authority. -- W. Va. Code §§ 29-12-5(a)(10); 29-12D-2(a)(6); 29-12D-3(c); 29-12D-3(f); 29-12D-3(g).

1.3 Filing Date. --

1.4. Effective Date. --

§115-7-2. Purpose.

Subject to applicable limitations, the purpose of the patient injury compensation fund is to provide fair and reasonable compensation to qualified claimants in medical professional liability actions for the portion of economic damages awarded that are uncollectible as a result of the limitations on economic damage awards for treatment of emergency conditions for which patient is admitted to a designated trauma center care or as the result of the operation of the joint and several liability principles and standards as provided in W. Va. Code §§55-7B-1 et seq., as amended by 2003 Acts of the Legislature, chapter 147.

§115-7-3. Definitions.

3.1. For purposes of this rule, the following words or terms shall have the same meaning as set forth in the chapter 55, article 7B, section 2 of the code: "collateral source", "emergency condition", "health care", "health care facility", "health care provider", "medical injury", "medical professional liability", "medical professional liability insurance", "non-economic loss", "patient", "plaintiff" and "representative".

3.2. "Act" shall mean article 12D, chapter 29 of the code establishing the patient injury compensation fund.

3.3. "Actuarially sound" means funding sufficient to pay those claims for economic damages and all administrative or operational costs of the fund which are know or which are projected from analyses of claims, loss experience and other relevant factors.

3.4. "Agency" means the state board of risk and insurance management.

3.5. "Application for compensation" means the claim form prescribed by the agency by which a claimant submits a written request to the fund for payment of economic damages.

3.6. "Board" means the governing body of the state board of risk and insurance management as provided in W. Va. Code § 29-12-3.

3.7. "Claimant" shall mean the person submitting an application for compensation to the fund.

3.8. "Code" means the Code of West Virginia of 1931, as amended.

3.9. "Director" means the executive director of the state board of risk and insurance management.

3.10. "Economic damages" means those special damages which are reduced to an actual dollar amount that can be presented to a jury in an action brought under the medical professional liability act to compensate a plaintiff for the monetary costs of a medical injury, such as lost earnings, past and future medical care and rehabilitation services. Economic damages do not include non-economic damages, such as pain and suffering, or hedonic damages, court costs, post-judgment interest, attorneys' fees, extra-contractual damages, or punitive damages.

3.11. "Fund" means the West Virginia Patient Injury Compensation Fund created by W. Va. Code § 29-12D-1(a).

3.12. "Investment management board" means the West Virginia investment management board established pursuant to the provisions of W. Va. Code §12-6-3.

3.13. "Medical professional liability act" means the provisions of Article 7B, Chapter 55 of the Code.

3.14. "Occurrence" means any act, series of acts, failure to act, or series of failure to act arising out of the rendering of, or failure to render medical professional services to any person within West Virginia by a health care provider resulting in a medical injury or injuries.

3.15. "Qualified claimant" means a claimant that is both a "patient" and a "plaintiff" as those terms are defined in the medical professional liability insurance act.

3.16. "Year" or "fiscal year" means the twelve (12) consecutive month period beginning the first day of July and ending the last day of June.

§115-7-4. Patient Injury Compensation Fund.

4.1. The assets of the fund, and any income earned thereon, shall be held in trust for the benefit of qualified claimants and may not become part of the general revenue of the State.

4.2. The fund shall consist of all contributions, revenues and moneys which may be paid into the fund by the state of West Virginia or from any other source, together with any and all interest, earnings, dividends, distributions, moneys or revenues of any nature accruing to the fund.

4.3. Claims or expenses against the fund are not a debt of the State of West Virginia or a charge against the general revenue fund or any other state fund. The State shall not be liable for any of the liabilities of the fund.

4.4. The fund is not an insurance company or insurer for any purpose under the code. The fund shall not be made a defendant in any civil action arising under the medical professional liability act.

4.5. The fund shall be operated as a fund of last resort. Payment by the fund to a qualified claimant for that portion of economic damages that are uncollectible due to the operation of the limits on economic damages as set forth in the medical professional liability act regarding joint and several liability and the for the treatment of emergency conditions for which a patient is admitted to a designated trauma center shall only be made only when all other insurance coverages have been exhausted.

§115-7-5. Fund Administration.

5.1. The Agency shall implement, administer and operate the fund in accordance with the provisions of the act and these rules.

5.2. The assets of the fund shall be deposited with, held and invested by the investment management board. The fund assets may be invested and reinvested by the investment management board in the same manner as provided by law for the investment of other trust fund assets managed by the investment management board. The assets of the fund shall be accounted for separately by the investment management board.

5.3. The assets of the fund may be used to pay all reasonable costs and expenses of any nature whatsoever associated with the administration and operation of the fund.

5.4. The director shall be responsible for the day to day administration, operation, conservation, management, and defense of the fund to the extent of the responsibilities imposed on the board under the provisions of the act.

5.5. The director may employ or contract for personal, professional or consulting services regarding the administration, operation and defense of the fund and for services necessary or advisable to implement the authority and discharge the responsibilities imposed on the board by the act, including, but not by way of limitation:

5.5.a. Retaining the services of a qualified, competent, independent consulting actuary to advise and consult with the agency on all aspects of the fund's administration, operation, and defense which require application of actuarial science and to perform and submit an annual actuarial study. The actuary shall be required to determine on an annual basis the actuarial soundness of the fund and to make recommendations regarding the level of funding needed to make the fund actuarially sound;

5.5.b. Employing or contracting with legal counsel to advise and represent the board and represent the fund in matters relating to the operation of the fund or payment from the fund. Legal counsel may assist in the investigation of the claim for compensation and whether all applicable insurance in the underlying action has been exhausted; and

5.5.c. Retaining the services of a qualified independent auditor to conduct an annual audit of the fund. The annual audit may be conducted as part of the annual fiscal year-end audit of the other programs administered by the agency.

5.6. A reasonable contingency reserve for unexpected contingencies, consistent with generally accepted accounting principles, may be established by the fund.

§115-7-6. Payment of Compensation.

6.1. Upon a final determination approving payment to a qualified claimant as provided in these rules, the board may make a payment in satisfaction or partial satisfaction of the claim for economic damages. Compensation payments shall only be made to qualified claimants who would have collected economic damages but for the operations of the limits on economic damages set forth in W. Va. Code §§ 55-7-9 [joint and several liability] and 55-7-9c [limitation on liability for treatment of emergency conditions for which patient is admitted to a designated trauma center].

6.2. Subject to the maximum amount set forth in section 6.3 of this rule, the amount payable by the fund as compensation payable to a qualified claimant shall be lesser of:

6.2.a. The amount of economic damages uncollectible as a result of the limitations of the statutory limitations on economic damage awards for treatment of emergency conditions for which the patient is admitted to a designated trauma center or as the result of the reform to joint and several liability principles and standards. In determining the amount of uncollectible economic damages, payments of available

insurance in the underlying professional medical liability action shall be deemed to have been paid first to any economic damage awarded in the underlying action; or

6.2.b. The maximum amount of money that could have been collected from all applicable insurance prior to the creation of the fund. For purposes of the fund, amounts payable by any insurance guaranty funds due to the insolvency of an insurance company are deemed applicable insurance.

6.3. The maximum amount payable out of the fund in respect to any one occurrence shall not exceed one million dollars, inclusive of claimant attorneys' fees.

6.4 If, after the payment of all expenses incurred for the administration of the fund during the fiscal year, the available cash and invested assets remaining in the fund are insufficient to pay in full all claims for economic damages that have become final during such fiscal year, the amount paid to each qualified claimant shall be prorated in a manner so that each qualified claimant with a final claim receives the same percentage of compensation as his or her amount of approved and outstanding compensation at the end of the fiscal year relates to the total amount of all approved and outstanding compensation at the end of the fiscal year.

6.5. Any amount of economic damages compensation unpaid to qualified claimants after the proration, shall be carried forward to the next fiscal year as a final claim. Such unpaid claims are not a debt of the state of West Virginia or a charge against the general revenue fund or any other state fund. The state shall not be liable for any of the liabilities of the fund and payments in future years shall be entirely dependent on the contributions, revenues or moneys paid into the fund by the state or from any other source.

6.6. The board, in its discretion, may make payments to a qualified claimant in the form of periodic payments.

§115-7-7. Application for Compensation.

7.1. A claim for reimbursement of economic damages shall be made by filing a verified written application for compensation on a form that conforms substantially to the form prescribed by the agency. An application for compensation must be signed by the claimant or his or her legal representative and duly verified by a notary public.

7.2. An original and two (2) copies of the application for compensation shall be submitted at the time of filing.

7.3. The claimant shall authorize the agency access to all of his or her medical records and shall execute appropriate confidentiality or privacy waivers granting the agency access to such medical information

7.4. The application for compensation must be filed with the agency with all supporting documentation within sixty (60) days of the date when the judgment in the underlying medical professional liability action became final.

7.5. The verified application for compensation shall set forth and provide the following information:

7.5.a. The name and address of the claimant and such other identifying information;

7.5.b. The name and address of the legal representative of the claimant and the basis for his or her representation of the claimant;

7.5.c. The date(s), time(s) and place(s) where the underlying medical injury occurred;

7.5.d.. A statement of the facts and circumstances regarding the underlying medical injury leading to and ultimately giving rise to the submission of the application for compensation.

7.5.e. A detailed description of the economic damages for which the claim for economic damages is made;

7.5.f. Documentation of expenses and services incurred to date, indicating whether such expenses and services have been paid for, and if so, by whom;

7.5.g. Documentation of any applicable private or government source of services or reimbursement relative to the underlying medical injury;

7.5.h. A schedule listing all liability insurance, policy limits, and amounts collected by claimant to date of all responsible persons with respect to the medical injury and the underlying medial liability civil action. Copies of all such insurance policies or policy declaration pages shall be attached to the application;

7.5.i. A detailed statement of the facts and circumstances, including any declaratory judgments or rulings, demonstrating how the claimant exhausted all reasonable means to recover from all applicable liability insurance coverages;

7.5.j. Certified copies of court documents including complaint, answer, judgment, special jury interrogatories, verdict forms, declaratory rulings and dispositive motion orders;

7.5.k. Appropriate and relevant assessments, evaluations, and prognoses and such other records and documents as are reasonably necessary for the determination of the amount of compensation to be paid to, or on behalf of, the claimant.

7.5.1.. All available relevant medical records relating to the claimant and the underlying medical injury and an identification of any unavailable medical records know to the claimant and the reasons for the unavailability.

7.6. In addition to the application for compensation, the agency may require that the claimant submit materials substantiating the facts in the application. If the agency finds that an application does not contain the required information or that the facts stated therein have not been adequately explained or documented, it shall notify the claimant in writing of the specific additional items of information or materials required and provide the claimant, or his or her representative, with thirty (30) days from the date of the notification in which to supplement the application. Unless a claimant requests and is granted in writing an extension of time by the agency, the agency may reject the claim for failure to file additional information or materials within the specified time.

7.7. The claimant may file an amended application or additional substantiating material to correct inadvertent errors at any time before the agency has completed its consideration of the original application for compensation.

§115-7-8. Settlements.

8.1. Provided that fund's actuary determines that the fund is actuarially sound and fully funded, the board may, but is not required to, make a payment or payments out of the fund to a qualified claimant in connection with the settlement of a claim arising under the medical professional liability act.

8.2. The board may, but is not required to, consider, approve or disapprove any settlement petition.

8.3 The board in exercising its discretion whether to consider a settlement of a medical liability claim arising under the medical professional liability act, shall consider whether the payment from the fund to a qualified claimant is in the best interests of the fund. In making this consideration the board may consider the following:

8.3.a. The current actuarial soundness of the fund;

8.3.b. The sufficiency and strength of the proof in the settlement petition and underlying medical professional liability civil action establishing the following:

8.3.b.1. Legal liability under the medical professional liability act;

8.3.b.2. The fault of the respective responsible persons;

8.3.b.3. The exhaustion of all reasonable means to recover from all available liability insurance;

8.3.c. Any other matter deemed relevant by the board.

8.4. The petition for settlement shall be submitted on forms prescribed by the board. The original and two (2) copies of the petition for settlement shall be submitted to the board. The petition shall include the information requested in section 7, subsection 5 of this rule, and shall include in addition thereto, the following:

8.4.a. A statement indicating the court (federal or state) in which the underlying medical injury action is pending, the docket or civil action number, the parties to such action, and its present status;

8.4.b. A description of the economic damages for which compensation from the fund is proposed;

8.4.c. A statement setting forth the amount proposed as a settlement;

8.4.d. A statement setting forth the proposed method and duration of dispersal of proceeds from the fund as a lump sum or as a periodic award.

8.5. The board shall not approve any settlement amount until the agency has completed its investigation of the settlement petition. The agency reserves the right to fully investigate all relevant issues prior to reaching a determination.

8.6. When the claimant and the board reach an agreement on a settlement amount, the proposed settlement shall be presented to the court in accordance with the act. The claimant shall be responsible for all court costs. Any agreed to settlement amount shall not become final until approved by the court.

8.7. The claimant of an approved settlement petition shall sign a written release which absolves the fund, the agency or the board of any liability or further obligation with respect to the claim.

§115-7-9. Initial Review and Determination.

9.1. The director shall appoint an application review committee, consisting of three individuals, including agency claims manager or assistant claims manager, and two other managerial or professional employees or contractors.

9.2 Upon receipt of an application for compensation, the application review committee shall undertake an evaluation, investigation and review of the application for compensation.

9.3. Based upon its review, analysis and investigation, the application review committee shall make a written recommendation to the executive review committee whether payment should be made from the fund and the amount of payment to be made from the fund consistent with the award in the underlying medical liability action, the evidence, the applicable law, and the purpose and best interests of the fund.

9.4. The application review committee shall determine on the basis of evidence presented to it or gathered by it, the following matters:

9.4.a. Whether the claimant is a qualified claimant;

9.4.b. Whether the petition for compensation was filed in accordance with the Act and these rules;

9.4.c. Whether there has been an award of economic damages as a result of a medical injury in a civil action filed under the medical professional liability act;

9.4.d. Whether the claimant has satisfactorily established that he or she has exhausted all reasonable means to recover from all applicable liability insurance an award of economic damages, including whether the claimant has pursued all available legal means to determine applicability and availability of insurance coverages from all responsible persons;

9.4.e. The portion of the economic damages awarded that is uncollectible as a result of the limitations on economic damage awards for trauma care or as the result of the operation of the joint and several liability principles set forth in the medical professional liability act.

§115-7-10. Executive Review Committee.

10.1. An executive review committee shall be appointed by the board and shall consist of three individuals, one of which shall be the director. The other two individuals shall be professionals or executive level staff and may include one board member.

10.2. The executive review committee shall meet upon call of the director or chairperson of the board to review the recommendation of the application review committee.

10.3. The executive review committee may adopt, modify, remand or reject the recommendation of the application review committee. The executive review committee shall provide the reason or reasons for the rejection or remand of the recommendation of the application review committee. If the recommendation is rejected or remanded, the application review committee shall reconsider its recommendation and address the issues identified by the executive review committee.

10.4. If the recommendation of the application review committee is accepted by the executive review committee, notice of the determination shall promptly be sent to the claimant or his or her authorized representative stating with reasonable specifity the grounds for the determination. The notice shall be sent by certified mail, return receipt requested.

§115-7-11. Administrative Appeal

11.1. A claimant aggrieved by the determination of the executive review committee on a petition for compensation, may appeal the decision to the board for an administrative hearing as provided in the administrative hearing rules promulgated by the board within fifteen (30) thirty days or receipt of such determination.

11.2. The claimant may present evidence and testimony on his or her own behalf or may retain counsel for purposes of the administrative appeal.

§115-7-12. Judicial Appeal of Final Decision.

12.1. If the administrative appeal is denied in whole or part by the board pursuant to section 11 of this rule, a claimant may request a transcript of the administrative hearing, with the cost to be borne by the claimant.

12.2. A claimant adversely affected by a final administrative order or decision of the board has the right to an appeal pursuant to W. Va. Code § 29A-5-4.

§115-7-13. Attorneys Fees.

Provided that the fund is determined to be actuarially sound, the board may authorize the payment out of the fund to pay the reasonable attorneys fees of attorneys representing qualified claimants receiving compensation. The board shall develop and adopt guidelines for the payment of such claimant attorneys' fees out of the fund.

§115-7-14. Confidentiality of Information.

To the extent required by law by court order, the agency shall maintain as confidential and exempt from disclosure personal or medical information regarding the claimant. The agency may maintain as exempt from disclosure, to the extent permitted by law, its internal memoranda.