

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE June 11, 1987
ADMINISTRATIVE LAW DIVISION

NOTICE OF AN EMERGENCY RULE

AGENCY: Workers Compensation Commission TITLE NUMBER: 85

CITE AUTHORITY: WV Code 23-1-13, 23-1-15, 23-4-3

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES ☐, NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: Series 8

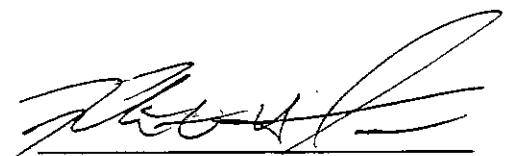
TITLE OF RULE BEING FILED AS AN EMERGENCY: Medical Fee Schedule

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

SEE ATTACHED

Use Additional Sheets If Necessary.



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Secretary of State

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STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

June 11, 1987

PROPOSED RULES
STATE REGISTER FILING

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(Plus all the volunteer
help we can get)

*Commonwealth
Office of
Workers Comp
348-7575*

=====

AGENCY	<u>Workers' Compensation Fund</u>		
CONTACT PERSON	<u>William Mitchell</u>	PHONE	<u>348-2580</u>
TYPE OF RULE	<u>Emergency</u>		
TITLE OF RULE	<u>Medical Fee Schedule</u>		

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CHAPTER 23 ARTICLE 4 SERIES VIII

AUTHORITY 23-1-13, 23-1-15, and 23-4-3

CHECK APPLICABLE ITEMS BELOW TO SHOW KIND OF ACTION BEING TAKEN

☐ NEW RULE

☐ NOTICE OF HEARING

☐ AMENDMENTS TO EXISTING RULE

☐ NOTICE OF AGENCY APPROVAL
(legislative rules only)

☐ REPEAL OF EXISTING RULE

☐ NOTICE OF AGENCY ADOPTION
(interpretive & procedural
rules only)

NOTE: ALL FILINGS REQUIRE ONLY
ONE COPY, EXCEPT FINAL
FILING OF RULES WHICH
REQUIRES AN ORIGINAL AND
A COPY.

☐ FINAL FILING

☒ FIRST EMERGENCY FILING

☐ SECOND EMERGENCY FILING



WORKERS' COMPENSATION FUND

601 MORRIS STREET
CHARLESTON, WEST VIRGINIA 25301

ARCH A. MOORE, JR.
Governor

June 11, 1987

JOHN F. LEABERRY
Commissioner

Mr. Ken Hechler
Secretary of State
State Capitol
Building 1, Suite 157-K
Executive Office
Charleston, WV 25305

FILED
JUN 11 PM 3:55
SECRETARY OF STATE

Re: Emergency Legislative Rules

Dear Mr. Hechler:

Enclosed herewith for filing in the State Register are Emergency Legislative Rules. These rules were also filed this date with the Legislative Rule-Making Review Committee.

The following is a statement of the facts and circumstances constituting the emergency requiring the filing of these rules.

In early 1985 development of a medical fee schedule, called the Medical Cost Containment System, began. Also, in 1986 the Legislature enacted an amendment to the Workers' Compensation Law which requires the Commissioner to submit a fee schedule to the Legislature on the first day of each regular legislative session.

Shortly after work on the aforesaid project began, because of problems that were being experienced that were peculiar to the cost of chiropractic services, and because development of a fee schedule for only chiropractic services would require far less development, documentation, and expenditure, a fee schedule for chiropractic services was established and put into operation first, while the major, all-inclusive Medical Cost Containment System was being developed.

The Chiropractic Society sued the Commissioner, alleging that the fee schedule regulating the cost of chiropractic services had not been promulgated in accordance with the rule-making procedures set forth in the Administrative Procedures Act. The Commissioner defended the suit upon the ground that provisions of the Administrative Procedures Act were not applicable to promulgation of the fee schedule.

Mr. Ken Hechler
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June 11, 1987

Re: Emergency Legislative Rules

On June 1, 1987, the Supreme Court of Appeals forwarded its order in the aforesaid case, W.Va. Chiropractic Society, Inc., et al. v. Mary Martha Merritt, Commissioner, etc., No. 17266. The Court held, in part, as follows:

"A schedule established by the Workers' Compensation Commissioner under W.Va. Code, 23-4-3, which fixes maximum reasonable amounts payable to health care providers and determines the type and amount of medical services reasonably required, is a rule subject to the rule-making requirements of the Administrative Procedures Act, W.Va. Code, 29A-1-1, et seq."

Obviously, the foregoing judicial mandate is applicable to the Medical Cost Containment System, as well as to the chiropractic fee schedule.

While the aforesaid case was being litigated, development of the Medical Cost Containment System was progressing. With a tentative effective date for the on-line computer program of June 15, 1987, proposals, bids, planning, design, programming, testing, etc. proceeded on schedule. Also, numerous meetings, training sessions, and other ongoing communications with the health care community were conducted and relied upon for advice and participation in development of the system.

Emergency rules must be filed at this time for the purpose of authorizing implementation of the system. Substantial harm to the public interest would be suffered if these rules did not become effective June 15, 1987. The enormous commitment of time and money to this project must not be discarded or jeopardized. In addition to the years of work and hundreds of thousands of dollars invested by this agency in the project, substantial involvement of other state agencies has been involved, i.e. I.S.S.D., Finance and Administration, Insurance Commission, etc.

The several state medical associations have cooperated in the effort by offering advice and assistance. A contract has been negotiated with the American Medical Association for utilization of their proprietary coding and billing data. Other contracts have been negotiated with medical data consulting firms. The West Virginia Hospital Association has participated in the design of reporting and billing forms to be used.

Mr. Ken Hechler
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June 11, 1987

Re: Emergency Legislative Rules

Providers of medical services in all specialties, including rehabilitation centers, rehabilitation consultants, ambulance services, providers of prosthetic appliances and fixtures, etc. have participated in development of the system.

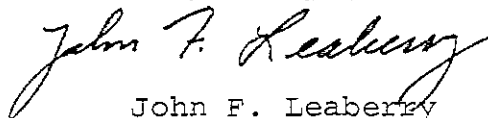
All of the aforementioned providers of medical services have a stake in development of the system, and they expect it to be effective June 15, 1987. They have trained their personnel, obtained the forms, instructions, etc. and intend to function according to design of the system. Surely, they are entitled to be assured that all that has transpired will not be discarded. Obviously, a state of chaos would result if the state was suddenly without an organized, manageable system for billing and collection of medical fees.

A further harm to the public interest that must be avoided is the monetary loss that would be suffered if the cost containment goal was not realized. That would produce higher charges against the accounts of employers. Higher losses require the assessment of higher premium rates. Higher premium rates influence the cost of goods and services. Thereby, the public at large throughout the state would be subjected to an indirect harmful influence.

In the interest of precluding the aforesaid potential harm to the public interest, it is respectfully urged that these emergency rules be filed in the State Register and made effective until proposed legislative rules can be filed and the Legislature can consider the most appropriate method of dealing with the matter, i.e. enactment of legislative rules, enactment of an express exemption from the requirements of the Administrative Procedures Act, or otherwise.

Thank you for your cooperation in this matter.

Very truly yours,



John F. Leaberry
Commissioner

JFL:WM:cm

Enclosure

WEST VIRGINIA EMERGENCY LEGISLATIVE RULES
WORKERS' COMPENSATION COMMISSIONER
Chapter 23-4
Series VIII

FILED
1987 JUN 11 PM 3:53
CLERK OF COURTS
STATE OF WEST VIRGINIA

Title: Medical Fee Schedule

Section 1. General

1.1 Scope - These Emergency Legislative Rules shall govern the schedule of maximum reasonable amounts to be paid to physicians, surgeons, hospitals, or other persons, firms or corporations for the rendering of treatment to injured employees.

1.2 Authority - W.Va. Code, 23-1-13, 23-1-15, and 23-4-3.

1.3 Filing Date - June 11, 1987.

1.4 Effective Date - June 15, 1987.

Section 2. Medical Cost Containment System Manual

The Workers' Compensation Fund Medical Cost Containment System Manual is hereby incorporated by reference into these rules. A copy of the manual is enclosed herewith and identified as Appendix A.



WORKERS' COMPENSATION FUND

601 MORRIS STREET
CHARLESTON, WEST VIRGINIA 25301

ARCH A. MOORE, JR.
Governor

June 29, 1987

JOHN F. LEABERRY
Commissioner

Mr. Ken Hechler
Secretary of State
State Capitol
Building 1, Suite 157-K
Charleston, WV 25305

FILED
1987 JUN 29 PM 3:55
SECRETARY OF STATE

Re: Proposed Legislative Rules

Dear Mr. Hechler:

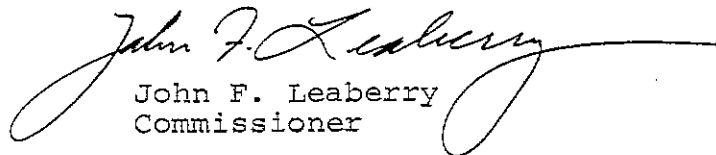
Enclosed herewith are Proposed Legislative Rules to be filed in the State Register.

A copy of the first page of the section to be repealed by these rules is enclosed.

The Emergency Rules pertaining to the same subject matter, which were filed on June 11, 1987, are hereby withdrawn because they were ruled invalid by the Kanawha County Circuit Court, Judge Workman, at a hearing held June 12, 1987, in the case of West Virginia Chiropractic Society, Inc., et. al. v. West Virginia Workers' Compensation Fund, et. al, Civil Action No. 87-MISC.-285.

Thank you for your cooperation in this matter.

Very truly yours,


John F. Leaberry
Commissioner

JFL:WM:cm

Enclosures