WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Workers' Compensation Division Bureau of Employment Programs TITLE NUMBER: 85

RULE TYPE: Exempt Legislative ; CITE AUTHORITY §21A-3-7(c); 23-1-1 23-4-3(g); 23-4-3b(a)

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 NEW RULE BEING PROPOSED: 19

TITLE OF RULE BEING PROPOSED: Guidelines for Medical Treatment of Occupational Pneumoconiosis

There will be three (3) public hearings

DATE OF PUBLIC HEARING: February 6, 7, & 10, 1995 TIME: 10:00 a.m.

LOCATION OF PUBLIC HEARING: (1) Room 206, Charleston Civic Center, Charleston - Feb. 6, '95

(2) Woodland Room, Glade Springs, Beckley - Feb. 7, 1995

(3) Jerry West Lounge, WVU Colesium Morgantown - Feb. 10, 1995

COMMENTS LIMITED TO: ORAL___, WRITTEN___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: John H. Kozak, Director
Until March 10, 1995
Legal Services Division
P. O. Box 3922
Charleston, WV 25339-3922

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Andrew N. Richardson
Authorized Signature
Andrew N. Richardson

3.80

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Guidelines for Medical Treatment for Occupational Pneumoconiosis

Type of Rule: **Exempt** X **Legislative** ____Interpretive ___ Procedural

Agency Workers' Compensation Division, Bureau of Employment Programs

Address Post Office Box 3922

Charleston, WV 25339-3922

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
EXTIMATED TOTAL COST	$83,504	$	$263,678	$347,182	$365,182
PERSONAL SERVICES	32,232		172,045	204,277	204,277
CURRENT EXPENSE	8,231		49,386	57,617	57,617
REPAIRS & ALTERNATIONS	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	7,041		42,247	49,288	49,288
OTHER	36,000		-0-	36,000	54,000

2. Explanation of above estimates:

Increase in personal services (cost of 2 additional Medical Claims Analysts at $16,116.00 per year).

Increase in current expenses (personal benefits) based on the average current (per person) costs -- $4,115 times the two additional employees.

Increase in equipment (repairs and alternations) based on the non-personal costs per current employee - $3,520.00 times the two new employees.

Other category is for additional claims review secondary to the more restrictive guidelines. We examine approximately 2,000 new claimants for OP benefits each year. We also have 1,725 claimants currently received OP benefits, and 12,500 with closed awards (but still eligible for medical treatment). There is no data available to predict how many of these would be affected by the new guidelines nor how many of those would appeal any subsequent reduction of services. Medical payment staff estimate 6,000 claimants currently receiving medical payments (based on the amount of medical benefit payments). An estimate based at a 10% appeal rate (of those in receipt of medical services) would produce 600 claims that may require review by a medical specialist (at $60.00 per review).

3. Objectives of these rules:

To provide for guidelines for the standardazation of treatment for occupational pneumoconiosis in order to assure that needed, quality services will be delivered in a cost efficient manner.

Rule Title: Guidelines for Medical Treatment for Occupational Pneumoconiosis

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

An annual savings of approximately $200,000 is anticipated.

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

Costs for treatment of conditions unrelated to occupational pneumoconiosis will be returned to claimants and their regular health care insurers. Some clinics will experience a decrease in payments from Workers' Compensation

C. Economic Impact on Citizens/Public at Large.

None expected.

Date: January 9, 1995

Signature of Agency Head or Authorized Representative

Andrew N. Richardson

Andrew N. Richardson
Commissioner, Bureau of Employment Programs

Bureau of Employment Programs
Legal Services Division
Post Office Box 3922
Charleston, West Virginia 25339-3922

Gaston Caperton
Governor
Andrew N. Richardson
Commissioner

Summary of Proposed Exempt Legislative Rule

Guidelines for Medical Treatment for Occupational Pneumoconiosis

Title 85, Series 19

This proposed rule has been recommended by the Occupational Pneumoconiosis Board and the Health Care Advisory Panel. It is now before the Compensation Programs Performance Council for its consideration for adoption as an exempt legislative rule.

The proposed rule is applicable to those workers' compensation claimants who have been found to have occupational pneumoconiosis, but not for the treatment of other claimants who have suffered other types of injuries or occupational diseases. The rule requires prior written approval for most types of treatment for occupational pneumoconiosis. The treating physician must demonstrate that the requested treatment is necessary and due to occupational pneumoconiosis and not due to chronic obstructive pulmonary disease, emphysema, or bronchial spastic disease.

The rule specifies the types of treatment that will be paid for by the workers' compensation division based upon the degree of impairment that the claimant has suffered. The rule also provides for consultation with the Occupational Pneumoconiosis Board or a member thereof concerning the justification for and medical necessity of any proposed treatment including those instances where a treating physician is requesting authorization to deviate from the guidelines.

Payment for medical services for occupational pneumoconiosis will not be made unless the guidelines are followed or written permission is obtained to deviate from the guidelines.

TITLE 85
EXEMPT LEGISLATIVE RULES
BUREAU OF EMPLOYMENT PROGRAMS
WORKERS' COMPENSATION DIVISION

SERIES 19
GUIDELINES FOR MEDICAL TREATMENT FOR OCCUPATIONAL PNEUMOCONIOSIS

§85-19-1. General.

1.1. Scope. -- These rules implement the provisions of West Virginia Code, §23-4-3(g) and §23-4-3b(a).

1.2. Authority. -- West Virginia Code, §21A-2-6(1), -6(2) & -6(14); §21A-2-19; §21A-3-7(b) & -7(c); and §23-1-1; §23-4-3(g); and §23-4-3b(a). Pursuant to West Virginia Code, §21A-3-7(c), rules adopted by the compensation programs performance council and the commissioner are not subject to legislative approval as would otherwise be required under West Virginia Code, §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed. Pursuant to Enrolled Committee Substitute for House Bill 4030, Regular Session, 1994, the Department of Commerce, Labor and Environmental Resources was abolished. Pursuant to that same bill and to Executive Order No. 5-94 by the Governor, the Commissioner of the Bureau of Employment Programs is empowered to promulgate rules and regulations without the consent or approval of a departmental secretary.

1.3. Filing Date. --

1.4. Effective Date. --

§85-19-2. Purpose of these rules.

The purpose of these rules is to implement the provisions of West Virginia Code, §23-4-3(g) and §23-4-3b(a), with regard to the treatment of occupational pneumoconiosis as that term is defined in West Virginia Code, §23-4-1. Payment for medical treatment and other services including mechanical appliances and devices pursuant to West Virginia Code, §23-4-3(a)(1), is to be made where such treatment or other services or mechanical appliances or devices are reasonably required. Guidelines for what is reasonably required are to be developed by the health care advisory panel under the sections noted above. The following guidelines have been developed and approved by the health care advisory panel and have been submitted to the commissioner for approval. In order to be placed into full effect, those guidelines have been prepared as a legislative rule.

§85-19-3. Definitions.

As used in these rules, the following terms have the stated meanings unless the context of a specific use clearly indicates another meaning is intended.

3.1. "Commissioner" means the Commissioner of the Bureau of Employment Programs pursuant to West Virginia Code, §21A-2-1, and West Virginia Code, §23-1-1, and any deputies designated pursuant to West Virginia Code, §21A-2-12 & -13.

3.2. "Division" means the Workers' Compensation Division within the Bureau of Employment Programs as provided for by West Virginia Code, §21A-1-4, and West Virginia Code, §23-1-1 et seq.

3.3. "Occupational Pneumoconiosis" has the meaning given to that term pursuant to West Virginia Code, §23-4-1.

3.4. "Occupational Pneumoconiosis Board" means that body created pursuant to West Virginia Code, §23-4-8a.

§85-19-4. Application of this rule.

This rule is applicable solely to those claimants who have been found to have occupational pneumoconiosis or evidence there of by the occupational pneumoconiosis board pursuant to West Virginia Code, §23-4-8c, and have been awarded workers' compensation benefits. This rule is not applicable to the treatment of claimants who have been awarded workers' compensation benefits for other types of injuries or occupational diseases; Provided however, that if a claimant has been awarded workers' compensation benefits for both occupational pneumoconiosis and an injury or other occupational disease, then this rule is applicable to the treatment of the occupational pneumoconiosis but not the other compensable conditions.

§85-19-5. Treatment guidelines.

5.1. All treatment consisting of diagnostic testing, medication, durable medical equipment, and oxygen as set forth in subsection 5.2 through 5.14 of this section and hospitalizations must have prior written authorization except in emergency cases. All requested treatment must be shown to be necessary and due to occupational pneumoconiosis and not due to chronic obstructive pulmonary disease, emphysema, or bronchial spastic disease. A statement of medical necessity, prepared by the treating physician, shall be submitted with any request for treatment.

5.2. Claimants examined by the occupational pneumoconiosis board and not diagnosed as having occupational pneumoconiosis will not be eligible for payment of any medical benefits.

5.3. Claimants awarded benefits for occupational pneumoconiosis with a disability of 20% or less may be entitled to medical benefits consisting of an annual office visit, annual chest X-ray and annual vaccinations for flu and onetime use of pneumonia vaccine.

5.4. Claimants awarded benefits for occupational pneumoconiosis with a disability of 25% to 30% may be entitled to medical benefits as listed above plus necessary medication. Such medications may include expectorants, bronchodilator, antibiotics and steroids for pulmonary symptoms and diuretics. Reasonable care would include:

a. two oral medications; or

b. two inhalers; or

c. one oral medication and one inhaler.

5.5. Claimants awarded benefits for occupational pneumoconiosis with a disability of 40% to 50% may be entitled to medical benefits as listed above, except that, depending upon the statement of medical necessity by the treating physician, office visits may be authorized quarterly.

5.6. Claimants awarded benefits for occupational pneumoconiosis with a disability of 60% or more may be entitled to medical benefits as listed above except that office visits may be authorized monthly or more often, depending upon the statement of medical necessity by the treating physician.

5.7. Cardiac medications will not be authorized unless the cardiac problem is a complication of occupational pneumoconiosis. Authorization for treatment of a cardiac condition unrelated to the occupational pneumoconiosis such as cardiomyopathy, heart disease or coronary bypass surgery, will not be granted.

5.8. Authorization will be granted for treatment of a condition unrelated to occupational pneumoconiosis only if surgery, which would normally correct such condition, cannot be performed solely because of occupational pneumoconiosis.

5.9. Authorization may be granted for necessary home use of oxygen according to the american thoracic society and medicare standards.

5.10. Claimants awarded benefits for occupational pneumoconiosis with a disability of 40% or more may be granted home use of a nebulizer, depending upon the documentation of medical necessity by the treating physician.

5.11. Upon a showing of medical necessity for solely occupational pneumoconiosis, authorization may be granted for the following:

5.11.1. rental of durable medical equipment such as hospital beds, commode chairs and lifts;

5.11.2. in-home nursing care or home health care for bedridden claimants; and

5.11.3. nursing home care in properly licensed facilities.

5.12. Authorization will not be granted for education and instructional services, books or publications.

5.13. Upon prior written authorization, pulmonary rehabilitation may be administered by a pulmonary technician or physicians' assistant. Instruction should be on a onetime basis regardless of impairment with special emphasis on cessation of smoking.

5.14. Durable medical equipment should be rented rather than purchased with periodic review for need to continue unless it appears that the rental cost will exceed the cost of purchase. Home health care or home nursing care should be individualized and, where indicated, should follow medicare guidelines.

5.15. The occupational pneumoconiosis board or a member of the occupational pneumoconiosis board may be consulted for advice and recommendations regarding the justification and medical necessity of any treatment of a claimant for which authorization has been requested. The occupational pneumoconiosis board may review such requests after protest hearings on the first Wednesday of the month. The occupational pneumoconiosis board should be furnished the medical file or files prior to review on complicated problems. The occupational pneumoconiosis board then may issue a statement concerning recommendations to the commissioner concerning whether the payment of services is justified. The occupational pneumoconiosis board should be consulted concerning the advisability of heart/lung transplant authorizations.

§85-19-6. Severability

If any provision of these rules or the application thereof to any entity or circumstance shall be held invalid, such invalidity shall not effect the provisions or the applications of these rules which can be given affect without the invalid provisions or application and to this end the provisions of these rules are declared to be severable.