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

Form #1

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2010 FEB 23 AM 9:54

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Offices of the Insurance Commissioner (Workers' Compensation Rules) TITLE NUMBER: 85

RULE TYPE: Exempt Legislative CITE AUTHORITY W.Va. Code §§ 23-2C-22, 33-2-10(b) and 33-2-21(a)

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 NEW RULE BEING PROPOSED: 22

TITLE OF RULE BEING PROPOSED: Medical Review

DATE OF PUBLIC HEARING: Thursday, March 25, 2010 TIME: 3:00 PM

LOCATION OF PUBLIC HEARING: Offices of the WV Insurance Commissioner
1124 Smith Street – 4th Floor – Room 400
Charleston, WV 25301

COMMENTS LIMITED TO: ORAL ☐ WRITTEN ☐ BOTH ☒

DATE WRITTEN COMMENT PERIOD ENDS: Thursday, March 25, 2010 TIME: 3:00 PM

WRITTEN COMMENTS MAY BE MAILED TO:

Ryan Sims, Associate Counsel
Offices of the Insurance Commissioner
P.O. Box 50540
Charleston, WV 25305-0540
Ryan.Sims@wvinsurance.gov

The Department request 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

Virgil T. Helton
Cabinet Secretary
West Virginia Department of Revenue

Insurance Commission
Exempt Legislative Rule
Title 85, Series 22

MEDICAL REVIEW

TITLE 85, SERIES 22

BRIEF SUMMARY OF RULE

Title 85, Series 22 ("Rule 22," "Medical Review") is a new rule which requires workers' compensation carriers and self-insured employers to medically review certain medical requests by claimants prior to denying payment for the request. The Rule is designed to require a physician to review crucial medical requests before denying them.

Department of Revenue
Agency Questionnaire

Re: New Rule 22

MEDICAL REVIEW

TITLE 85, SERIES 22

Question 1: Are regulations required?

Not specifically. However, the OIC believes that this proposed Rule would lead to better medical review in certain WC medical requests, and therefore a more efficient WC system.

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

Not particularly. As with any rule amendment, it is anticipated that there will be stakeholder and public comment by those potentially affected.

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

This rule amendment is not a copy of another state's rule or a model rule. It is custom-drafted.

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

The Rule is designed to require WC carriers and self-insured employers to have certain WC medical requests reviewed by a physician prior to denying the same. For more information, see "Brief Summary".

Insurance Commission
Exempt Legislative Rule
Title 85, Series 22

MEDICAL REVIEW

TITLE 85, SERIES 22

STATEMENT OF CIRCUMSTANCES

Title 85, Series 22 ("Rule 22," "Medical Review"), is a new Rule being proposed to require physician review of certain WC medical requests. For more information, see the "Brief Summary" for this Rule.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Medical Review (Title 85, Series 22)

Type of Rule: __X__ Exempt Legislative _____Interpretive ___Procedural

Agency: Insurance Commission

Address: Post Office Box 50540

1124 Smith Street, Greenbrooke Building

Charleston, West Virginia 25305-0540

Phone Number: (304) 558-0401 Email: Ryan.Sims@wvinsurance.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The rule will have no additional fiscal impact upon state government.

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: Medical Review (Title 85, Series 22)

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

N/A

Date: _____

Signature of Agency Head or Authorized Representative

_____

Ryan Sims, Associate Counsel

TITLE 85
EXEMPT LEGISLATIVE RULE
WORKERS' COMPENSATION RULES OF THE WEST VIRGINIA INSURANCE COMMISSIONER

SERIES 22
MEDICAL REVIEW

§85-22-1. General.

1.1. Scope. -- This exempt legislative rule establishes the requirements and procedures to be followed by the Insurance Commissioner, carriers, self-insured employers, and third-party administrators regarding certain medical treatment decisions being made in the administration of workers' compensation claims.

1.2. Authority. -- W. Va. Code §§23-2C-22; 33-2-10(b); and 33-2-21(a). Pursuant to W. Va. Code §§23-2C-5(c)(2) and 33-2-10(b), workers' compensation rules proposed by the Insurance Commissioner and approved by the Industrial Council are not subject to W. Va. Code §§29A-3-9 through 29A-3-16, included.

1.3. Filing Date. --

1.4. Effective Date. --

§85-22-2. Definitions.

As used in this exempt legislative rule, the following terms have the stated meanings unless the context of a specific use clearly indicates another meaning is intended.

2.1. "Carrier" means any insurer authorized by the Insurance Commissioner to provide workers' compensation insurance pursuant to chapters twenty-three and thirty-three of the West Virginia Code.

2.2. "Medical review" means the clinical review of the case file by a West Virginia licensed physician.

2.3. "Responsible party" means the Insurance Commissioner, carrier, self-insured employer or third-party administrator whichever is applicable.

2.4. "Self-insured employer" means an employer who has been granted self-insured status under the provisions of W. Va. Code §23-2-9.

2.5. "Third-party administrator" means a third-party administrator licensed to administer workers' compensation claims pursuant to W. Va. Code §§23-2C-17 and 33-46-1 *et seq.*

§85-22-3. Medical Review Required.

3.1. No responsible party may deny payment for the following without first subjecting the request to medical review:

3.1.a. Surgery;

3.1.b. Durable medical equipment and/or device;

3.1.c. Medications which were previously paid for by the responsible party and were in use by the claimant when the claimant reached maximum medical improvement; and

3.1.d. Compensability in a claim based upon an assertion that there is not a medical causal relationship between the alleged occurrence or exposure and injury or disease.

3.2. Prior to a responsible party denying payment on a request as described in subdivisions a through d, subsection 3.1 of this section, the decision must be authorized by a physician licensed in the State of West Virginia who has performed medical review of the file.

3.3. Any order denying payment on a request as described in subdivisions a through d, subsection 3.1 of this section shall include the name and professional address of the physician who authorized such denial.

§85-22-4. Requests Deemed Approved.

4.1. If a responsible party fails to issue a written response to the claimant or the claimant's counsel of record regarding a medical request within fifteen (15) days of receipt of the same, the request shall be deemed to have been approved and the responsible party shall be required to pay for the request: *Provided*, That this provision is not intended to affect a responsible party's duty to "act upon" such a request consistent with the provisions of W. Va. CSR §85-1-10.3. et seq., and is a separate and distinct requirement from the provisions of W. Va. CSR §85-1-10.3. et seq.

4.2. If a responsible party fails to state the name of the physician who authorized the denial in the decision denying payment on a request as described in subdivisions a through d, subsection 3.1 of this rule, the request shall be deemed to have been approved and the responsible party shall be required to pay for the request.