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

RULE TYPE: Exempt *Legislative ; CITE AUTHORITY

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: 24

TITLE OF RULE BEING PROPOSED: Qualified Loss Management Programs

*Per W.Va. Code, §21A-3-7(c), this rule is not subject to Legislative review.

DATE OF PUBLIC HEARING: February 15, 1996 & February 27, 1996 TIME: 10:00 a.m.

LOCATION OF PUBLIC HEARING: On February 15, 1996, in Room 206, Civic Center
Charleston, West Virginia
On February 27, 1996
Dogwood Room, Ramada Inn
Intersection 119 S. and I-79 and I-68
Morgantown, West Virginia

COMMENTS LIMITED TO: ORAL___, WRITTEN___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:
The last day for written comments is March 11, 1996.

Randall B. Suter, Counsel
Legal Services Division
Post Office Box 3922
Charleston, WV 25339-3922
(304) 926-5130

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
Andrew N. Richardson
Commissioner

6.20

Bureau of Employment Programs
112 California Avenue
Charleston, West Virginia 25305-0112

Gaston Caperton
Governor
Andrew N. Richardson
Commissioner

January 11, 1995

The Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, WV 25305

Re: Proposed Exempt Legislative Rule
Title 85, Series 24
"Qualified Loss Management Programs"

Dear Secretary Hechler:

Please consider this letter to be my written approval for the filing of the above-noted proposed rule.

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 of the Governor, the Commissioner of the Bureau of Employment Programs is empowered to promulgate rules without the consent or approval of a department secretary.

Thank you very much for your assistance in this matter.

Very truly yours,

Andrew N. Richardson

Andrew N. Richardson
Commissioner

Summary of Proposed Exempt Legislative Rule
Statement of Circumstances
Qualified Loss Management Programs
Title 85, Series 24

This legislative rule is a new rule to implement the provision of West Virginia Code, §23-2B-3, regarding qualified loss management programs.

The goal of this rule is to establish workers' compensation reforms by increasing employer and employee commitment to workplace safety and injury prevention, resulting in a reduction of occupational fatalities, injuries and illnesses. The rule also provides for post-injury assistance to the worker which will result in a reduction in the workers' compensation fund deficit.

The rule provides for a prospective credit to the premium tax rate of a subscribing employer who participates in a qualified loss management program. The prospective credit is provided for a period of up to three years.

The rule specifies the qualifications of loss management service providers. The rule provides that the amount of credit against premium rates shall vary from firm to firm based upon the loss reduction success experienced by all of the subscribing employers of the sponsoring loss management firm.

The rule provides employer participation requirements, criteria for withdrawal of plan approval, a penalty for early termination of the program, notification requirements, and a process for administrative hearings.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 85CSR24, "Qualified Loss Management Programs"

Type of Rule: X Exempt Legislative ___Interpretive ___Procedural

Agency Workers' Compensation Division, Bureau of Employment Programs

Address Legal Services Division

P. O. Box 3922

Charleston, WV 25339-3922

Contact Person: Randall B. Suter, Legal Services Division

Phone No. (304) 926-5130

1. Effect of Proposed Rule

	ANNUAL			FISCAL YEAR	
	INCREASE	DECREASE	NET IMPACT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$34,544,160*	$(64,150,236)	$(29,606,076)	$(29,606,076)	$
PERSONAL SERVICES	**				
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT	**				
OTHER	34,544,160	(64,150,236	(29,606,076)	(29,606,076)	

2. Explanation of above estimates:

*Annual increase is based upon premium credits (8%) given to program participants. As the number of participants cannot be predicted, the annual increase figures were based on a 100% participation rate. Annual decrease is based upon an estimated 5% reduction in claims pay-outs. Again, the decrease is based upon a 100% participation rate.

**Personal services ($88,900) and equipment ($8,000) were previously included in cost estimates for 85CSR23, "Loss Prevention". Such costs cannot be reasonably allocated between 85CSR23 and the present rule.

3. Objectives of these rules:

The purpose of this rule is to implement the provisions of West Virginia Code, §23-2B-3, to promote the voluntary implementation of qualified loss management programs through the provision of a premium tax credit. The goal of this rule is to establish Workers' Compensation reforms by increasing employer and employee commitment to workplace safety and injury prevention, resulting in a reduction of occupational fatalities, injuries and illnesses, and post-injury assistance to the worker which will result in a reduction in the Workers' Compensation Fund deficit.

Rule Title: 85CSR24, "Qualified Loss Management Programs"

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The Workers' Compensation Division has a large deficit. The implementation of voluntary safety programs will reduce the participating employers' rate of loss and the resultant pay outs from the Fund. The premium tax credit is a limited incentive to implement and underwrite such programs.

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

Certain employers may voluntarily undertake steps to focus their attention on safety issues. Some expenditures may be required by employers to implement their program. Much of the cost of such programs will be underwritten by the provision of premium tax credits. The loss reduction experienced as a result of the focus on safety will ultimately result in a lower premium rate for the employer and a lower loss experience rate for the risk pool.

C. Economic Impact on Citizens/Public at Large.

The goal of this rule is to provide incentive to employers to develop loss management programs so as to improve worksite safety and reduce claims experience. The ultimate aim of this rule is to provide for a reduction in the Workers' Compensation deficit by reducing workplace injuries and illnesses.

Date: January 11, 1995

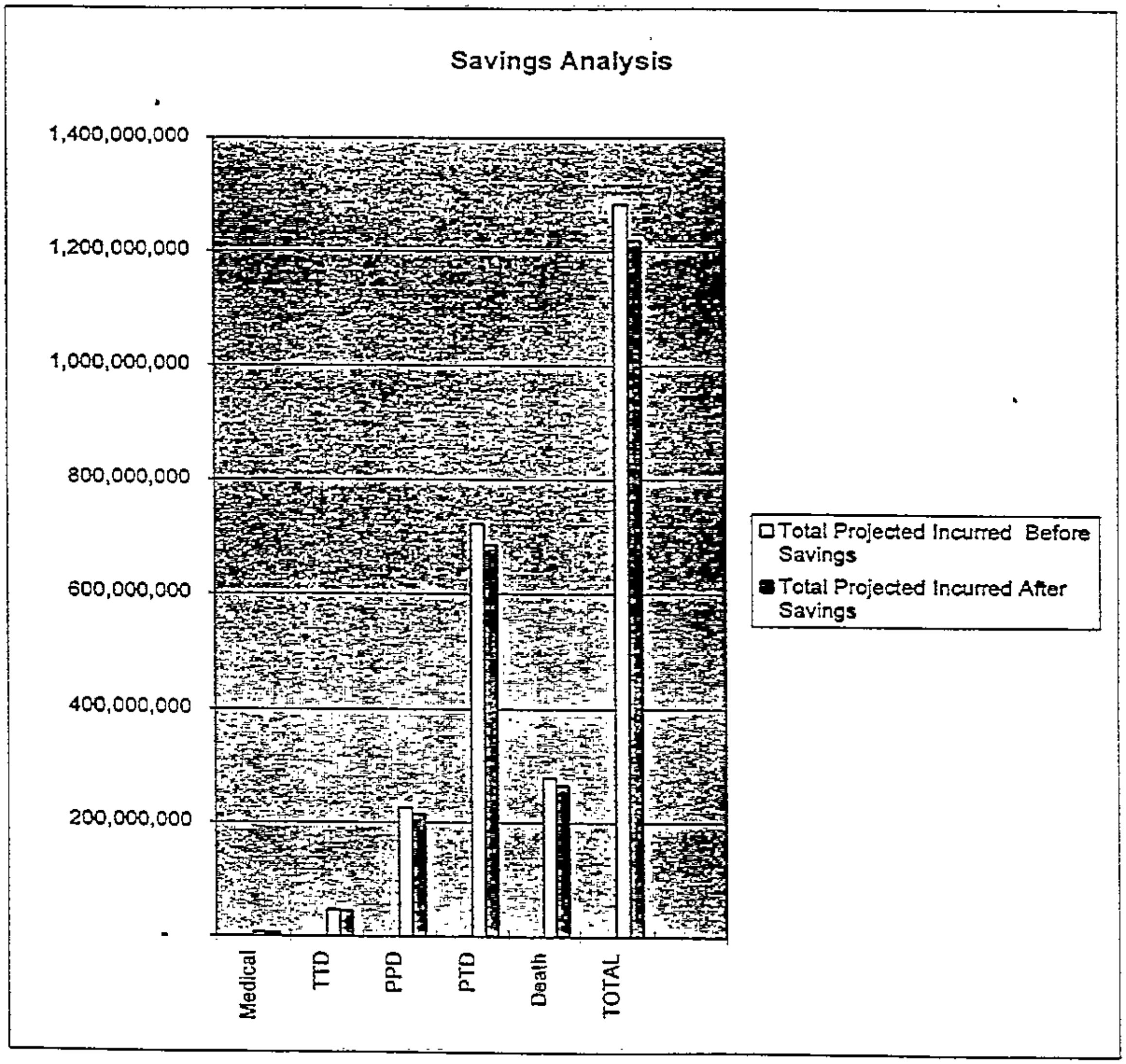
Signature of Agency Head or Authorized Representative

Andrew N. Richardson

Andrew N. Richardson
Commissioner, Bureau of Employment Programs

SAVINGS ANALYSIS

Benefit Type	Projected Claim Count for FY96 net of 5% Reduction	Average Cost Per Claim Assuming All Other Things Equal	Total Projected Incurred Before Savings	Total Projected Incurred After Savings
Medical	22,969	276	6,670,442	6,336,920
TTD	23,799	1,867	46,780,628	44,441,596
PPD	16,469	13,049	226,219,727	214,908,741
PTD	2,142	320,631	723,022,161	686,871,053
Death	1,120	237,754	280,311,765	266,296,177
TOTAL	66,500		1,283,004,723	1,218,854,487



Unaudited - For management discussion purposes only.

HISTORICAL TREND DATA
SOURCE: MIRA (OPEN CLAIMS DATA)

Benefit Type	# of Claims	% of Claim Type to Total # of Claims	Total Incurred (Discounted)	Average Cost Per Claim Type
Medical	91,573	34.54%	25,263,975	276
TTD	94,882	35.79%	177,177,053	1,867
PPD	65,660	24.77%	856,805,911	13,049
PTD	8,539	3.22%	2,737,865,293	320,631
Death	4,463	1.68%	1,061,095,342	237,754
	265,117	100.00%	4,858,207,574	

PROJECTED ANNUAL SAVINGS

Benefit Type	Projected Claim Count for FY96	5% Reduction Amt of Claims by Type	Average Cost Per Claim Assuming All Other Things Equal	Projected Annual Savings by Claim Type
Medical	24,178	1,209	276	333,522
TTD	25,052	1,253	1,867	2,339,031
PPD	17,336	867	13,049	11,310,986
PTD	2,255	113	320,631	36,151,108
Death	1,179	59	237,754	14,015,588
	70,000	3,500		64,150,236

Unaudited - For management discussion purposes only.

TITLE 85

EXEMPT LEGISLATIVE RULES

BUREAU OF EMPLOYMENT PROGRAMS

WORKERS' COMPENSATION DIVISION

SERIES 24

QUALIFIED LOSS MANAGEMENT PROGRAMS

§85-24-1. General.

1.1. Scope. -- This rule implements the provisions of West Virginia Code, §23-2B-3, regarding qualified loss management programs.

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. 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. --

§85-24-2. Purpose of rule.

The purpose of this rule is to implement the provisions of West Virginia Code, §23-2B-3, to promote the voluntary implementation of qualified loss management programs through the provision of a prospective premium tax credit. The goal of this rule is to establish workers' compensation reforms by increasing employer and employee commitment to workplace safety and injury prevention, resulting in a reduction of occupational fatalities, injuries and illnesses, and post-injury assistance to the worker which will result in a reduction in the workers' compensation fund deficit.

§85-24-3. 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. "Act" means the workers' compensation laws of the state of West Virginia which are codified at chapter twenty-three of the Code of West Virginia.

3.2. "Client employer" means an employer who participates with a qualified loss management service provider in accordance with and under the provisions of this rule.

3.3. "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.

3.4. "Credit factor" means a multiplier, determined in accordance with this rule, utilized to calculate premium tax credits.

3.5. "Director" means the executive director of the workers' compensation division, who is appointed by the commissioner and who serves as the chief operating officer of the daily operations of the workers' compensation division, provided by West Virginia Code, §23-1-4.

3.6. "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.

3.7. "Experience modification factor" means an actuarially determined multiplier of the premium tax base rate used to determine the premium tax rate (Note: The experience modification factor has been historically referred to as the experience modification rate or EMR).

3.8. "Good standing" with the division means that the employer has not defaulted on its obligations to make payments to the division. Being in delinquent status, as provided for in West Virginia Code, §23-2-5(b), is not equivalent to being in default and does not deprive the employer of good standing. The term default is defined in West Virginia Code, §§23-2-5(d), -5(e), -6, & -8. The term default also includes those situations under West Virginia Code, §23-2-5(f)(2)-(4), where an employer returns to default status upon breaching a reinstatement agreement. If an employer fails to meet the requirements of those sections, then it is in default and is not in good standing with the division.

3.9. "Injury" means compensable injuries or illnesses for which costs are incurred by the division within the meaning of W. Va. Code, §23-4-1 et seq.

3.10. "Joint labor and management safety committee" means a formally structured process to provide for and foster employee and employer involvement in safety reforms. Such structures include, but are not limited to, groups such as quality circles and self directed work teams. A tiered safety organization is permitted, if employees participate at each level of the organized committees.

A joint labor and management safety committee must exhibit the following characteristics to be considered acceptable:

a. Safety must be a priority of the group;

b. The group must have the authority to conduct safety inspections of the work area for which they are responsible and to determine and recommend corrective measures to management;

c. The group must meet regularly and minutes must be kept of the meetings;

d. Each member of the committee shall have an equal vote;

e. Members of the committee shall not experience any loss of wages while attending safety committee meetings or performing duties at the direction of the safety committee;

f. At least fifty percent (50%) of the members of the committee shall be employee representatives; and

g. All members of the committee shall be trained in matters related to workplace safety, such training shall include attendance at a seminar on basic safety programs sponsored or approved by the division.

3.11. "Operating personnel" means those individuals employed or utilized by a qualified loss management service provider to provide qualified loss management services to client employers. Such individuals include all specialists in safety, rehabilitation, and occupational health utilized by the qualified loss management service provider. Such individuals do not include clerical employees.

3.12. "Quarter" means the four calendar quarters: January 1 through March 31; April 1, through June 30; July 1 through September 30; and October 1 through December 31 of each calendar year.

3.13. "Regular subscriber" means an employer who is a subscriber to all parts of the compensation fund including the surplus fund.

3.14. "Self-insurer" and "self-insured employer" mean employers who have elected one or both of the options contained in W. Va. Code §23-2-9, and who pay individually and directly, or from their own benefit fund or system of compensation, the compensation and other benefits provided to injured employees or their dependents under the Act.

§85-24-4. Employer participation; eligibility.

4.1. Participation. Participation by an employer in a qualified loss management program is voluntary. No employer shall be required to participate in a qualified loss management program under the provisions of this rule.

4.2. Eligibility. Regular subscribers to the workers' compensation fund in good standing are eligible to participate in a qualified loss management program under the provisions of this rule. Self-insurers are not eligible to participate in the qualified loss management program established by this rule.

§85-24-5. Qualifications for loss management service providers.

In order to offer a credit to its client employers, a loss management service provider must submit and receive approval of its loss management program from the division following the procedures outlined below and containing the key elements indicated.

5.1. Loss management service providers must submit a loss management program to the workers' compensation division. The program shall be submitted in a time frame and form as prescribed by the division. Such submission may result from a request for proposal, issued or caused to be issued by the division, in a manner prescribed by the request for proposal. Each loss management service provider shall meet the following minimum qualifications.

5.2. A loss management service provider must be recognized. Such a service provider shall be recognized if it has demonstrated an ability to significantly reduce workers' compensation losses by implementing a loss control management program containing both pre-injury safety elements and post-injury claims management. In the determination of whether the service provider is a recognized loss management service provider, the following shall be considered in addition to the threshold requirements of 5.2:

5.2.1. The time period over which the loss management service provider has offered its program;

5.2.2. The number of client employers subscribing to the loss management program over the seven years prior to application; and

5.2.3. The effectiveness of the program offered by the loss management service provider. In determining the effectiveness of the program, the following shall be considered:

a. Pre-program and post-program injury frequency, injury severity, injury costs, and employer modification factors;

b. The data contained in 5.2.3.a shall be provided for all of the loss management service provider clients, and not just select clients, over the seven years prior to application;

c. All data shall be provided in a readable format prescribed by the division and shall contain copies of the experience modification factor calculations for the client employers; and

d. The division shall have the right to inspect books and business records of the loss management service provider in order to verify that it is a complete list and accurately represents the experience of such client employers.

5.3. Personnel. A loss management service provider must evidence its ability to perform services based upon qualifications of its operating personnel. All elements of operating personnel qualifications shall be reviewed.

5.3.1. Information regarding the job-related training and experience of all operating personnel must be submitted to the division.

5.3.2. Each loss management service provider shall have specialists on staff including experienced and qualified specialists in safety and occupational health.

5.4. Safety. A loss management service provider must have a structured approach to focus top level management of the employer, as well as other employer personnel, on safety.

5.4.1. A loss management service provider must provide a means of measuring and insuring the employer's commitment to implementing safe workplace practices.

5.4.2. A loss management service provider must provide for the implementation of a joint labor and management safety committee as part of its loss management program.

5.5. Safety audit. A loss management service provider shall provide an annual safety audit of each client employer. Such an audit shall include, but not be limited to, a report of all occupational injuries or illnesses.

5.5.1. Where such client employer is subject to the recording and reporting provisions of 29CFR Part 1904, the report shall include the information required in the format prescribed by the provision (form OSHA No. 200).

5.5.2. Where such client employer is subject to the recording and reporting provisions of 30CFR Part 50, the report shall include the information required in the format prescribed by the provision (MSHA Mine Accident, Injury, and Illness Report Form 7000-1).

5.5.3. Where such client employer is not subject to either of the foregoing federal reporting regulations, the report shall include the information required in the format prescribed by 29CFR Part 1904 (form OSHA No. 200).

5.6. Post injury response. A loss management service provider must provide a loss management program which:

5.6.1. Contains plans of action and specific techniques, consistent with the Act, which are designed to assist an injured worker in obtaining necessary medical care;

5.6.2. Contains specified means of maintaining contact with the injured worker and continuing claims control throughout the recuperation period;

5.6.3. Contains specified means of maintaining contact with medical providers throughout the recuperation period; and

5.6.4. Contains specified means to encourage an injured worker to return to work at the earliest possible time, including the development of modified work programs.

5.7. The additional elements must be included in a loss management program:

5.7.1. The approved loss management service provider must offer its qualified loss management program to every client employer desiring to avail itself of the credit assigned to the service provider by the division;

5.7.2. The program must contain a provision stating that the credit applicable to the first year is subject to change in the second and third years;

5.7.3. The program must contain a provision stating that a credit will not apply after the client employer has received a credit for three (3) years; and

5.7.4. The program must contain a provision stating that a client employer must be involved in the program for one year before eligibility for the credit is established. Credits are applied to the year period following each year of participation in the program and are calculated based upon participation year data. If participation in the program terminates prior to completion of a three year program, the client employer is penalized the amount of credit received.

5.7.5. The program must contain a provision that the qualified loss management service provider shall notify the division, prior to commencement of qualified loss management services, of each participating client employer.

5.7.6. The program shall contain a provision to allow a qualified loss management service provider to terminate its services to a client employer prior to the expiration of the one year eligibility requirement in the event the client employer is not committed to workplace safety, resulting in a reduction of occupational injuries and illnesses, and post injury assistance to the worker.

a. Disputes under this provision between qualified loss management service providers and client employers are not subject to resolution under the provisions of this rule.

b. Wrongful termination by a qualified loss management service provider may, in the division's discretion, result in withdrawal of plan approval under section nine of this rule.

§85-24-6. Assignment of credit factors.

6.1. Each qualified loss management service provider approved to offer a loss management program under the provisions of this rule shall be assigned a credit factor upon notice of approval or acceptance of proposal.

6.1.1. Loss management service providers approved or accepted under this rule shall, be assigned a credit factor of .08 (8%) for the first and second year of their loss prevention program.

6.1.2. Third year credit factors assigned in the above fashion shall be halved.

6.2. Upon accumulation of three years of program experience under this rule, the credit factor shall be based upon table 85-24A which compares the experience modification factors for years prior to the implementation of a loss management program to years subsequent to the implementation of a loss management program and expresses that comparison in the form of a ratio.

6.2.1. Data covering the ratio calculation shall be aggregated over all the client employers of the loss management service provider for the most recent five year period. Two experience modification factors, one for years prior to the program implementation and one for subsequent years, shall be used to determine the ratio.

6.3. The assigned credit factor shall be effective until the next July 1 after assignment. The credit factor shall be recalculated for every fiscal year thereafter. The recalculated credit factor shall be effective during the fiscal year for which it is calculated.

6.4. If the loss management program submitted by a loss management service provider contains data on client employers with at least three (3) governing classes, as contained in the "West Virginia workers' compensation classes and rates, fiscal year 1995," the credit will be applicable to all client employers in the program. Otherwise, the calculated credit factor shall apply only to those client employers whose governing class is in the submitted data. For client employers with other governing classes, the credit factor for newly established loss management service providers shall apply unless the credit factor developed by submitted data is less than the credit factor for newly established service providers whereupon such credit factor developed from the submitted data shall apply.

6.5. The assigned credit factor shall not exceed .15 (15%) for any year.

§85-24-7. Credits.

7.1. Each client employer who participates in a loss management program approved under the provisions of this rule shall be entitled to a prospective credit to premium taxes as determined by the credit factor multiplier.

7.1.1. A client employer must participate in an approved loss management program for at least a one year period before being entitled to claim a premium tax credit.

7.2. Application of the premium tax credit shall be as follows:

7.2.1. After the first year of approved program participation, the premium tax credit shall be applied to the period of program participation and taken by the client employer in the following year period;

7.2.2. After the second year of approved program participation, the premium tax credit shall be applied to the period of program participation and taken by the client employer in the following year period;

7.2.3. After the third year of approved program participation, the premium tax credit shall be applied to the period of program participation and taken by the client employer in the following year period; and

7.2.4. Participation in an approved program for a partial period after the first full year of participation shall result in a pro rata premium tax credit applicable to the period of program participation and taken by the client employer in the next subsequent year period.

7.3. The maximum time a premium tax credit shall be allowed for any client employer is three years.

7.4. The amount of credit applied to the first year of program participation shall be based on the credit factor assigned to the loss management service provider on the date the employer subscribes to the program.

7.5. The amount of credit applied to the second and third years of program participation shall be based on the credit factor assigned to the loss management service provider on the first day of July of the pertinent year.

7.5.1. The credit for the third year of participation in a loss management program shall be halved.

7.6. An employer who has subscribed to an existing program of a qualified loss management firm prior to the effective date of this rule shall be subject to a reduction in credit eligibility as follows:

7.6.1. Participation for one year or less shall result in credit eligibility for the full three years;

7.6.2. Participation for more than one year but less than two years shall result in credit eligibility for two years;

7.6.3. Participation for two years or more but less than three years shall result in credit eligibility for one year; and

7.6.4. Participation for three years or more shall result in no credit eligibility.

7.7. Changing loss management service providers prior to credit eligibility. If a client employer's enrollment in an approved program terminates, for any reason, before such employer becomes credit eligible and such employer subsequently becomes enrolled in another approved program, the employer's prior participation shall not be combined with the subsequent enrollment in order to comply with the required one year of participation to become credit eligible. In such case, the prior participation shall be disregarded and a new start-up date shall be applied. The credit shall be calculated in accordance with the provisions of section eight of this rule.

7.8. Changing loss management service providers after credit eligibility established. If a client employer's enrollment in an approved program terminates, for any reason, after the client employer becomes credit eligible, a pro-rata credit will be applied. To the extent that a client employer subsequently enrolls in another approved program within thirty days of such termination and participates in the program for the remainder of the subject period, the client shall be entitled to a full credit for the period. The start-up date of the employer's enrollment in the prior program shall be the date used to determine credit eligibility, subject to any adjustment that may be required because of a difference in the level of credit of the two loss management service providers involved.

§85-24-8. Withdrawal of plan approval.

8.1. If the division determines, after a meeting with the loss management service provider, that the loss management service provider is not in compliance with program requirements, the division is authorized to withdraw approval of the loss management program previously approved or accepted under this rule.

8.2. Should the division withdraw approval of the loss management program, the division shall provide at least thirty days written notice that such approval is withdrawn and that its participation in the qualified loss management program authorized West Virginia Code, §23-2B-3, is terminated.

8.3. A copy of the required notice shall be sent by the division to each of the service provider's client employers.

§85-24-9. Termination of participation by client employer.

9.1. The client employer may terminate participation in the loss management program upon three years of continuous participation in the program without penalty.

9.2. If the client employer terminates participation in the loss management program prior to three years of continuous participation in the program, a penalty shall be applied to the premium tax of the client employer in the amount of the premium tax credit previously granted. Such penalty shall be due immediately upon termination of participation of the client employer.

§85-24-10. Notification

The division shall send all notices required under the provisions of this rule by certified mail addressed to the loss management service provider or client employer at their last known residence or place of business: Provided, That, if any loss management service provider or client employer is represented by an attorney or other representative, then notice to the attorney or other representative shall be sufficient notice to the party so represented.

§85-24-11. Administrative protests and hearings.

11.1. Protest. A loss management service provider may protest any order, decision, designation or redesignation made under the provisions of this rule.

11.2. Petition. In order to preserve its right to protest, the loss management service provider must file a written petition with the division, stating the order or decision protested and the exact nature of the issue in controversy. In the written petition, the loss management service provider must designate a person or entity to receive official notices related to the protest and the loss management service provider must provide the address of the person or entity. The written petition must be received by the division within thirty (30) days after the loss management service provider receives notice of the objectionable order or decision or within sixty (60) days of the date of the objectionable order or decision, regardless of notice. This period may not be extended or waived.

11.3. Acknowledgement. Within thirty (30) days after receiving the written protest, the division shall issue a notice acknowledging the protest and providing an opportunity for hearing. Filing of a written protest temporarily stays the order or decision protested until a decision is rendered on such protest by a hearing examiner: Provided that, such temporary stay shall not exceed ninety (90) days from the date of the order or decision protested unless the loss management service provider is not provided an opportunity for hearing within that ninety (90) day period, in which case the temporary stay shall not exceed that date which the loss management service provider is provided an opportunity for hearing.

11.4. Subsequent administrative hearing proceedings shall be in accordance with 85 C.S.R. 7 "Rules for Selected Hearings."

§85-24-12. 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.

Table 85-24A

The qualification for a schedule rating credit is as follows:

Ratio of Experience Modification For Subsequent Years to that for Prior Years	First and Second Year Credit	Third Year Credit
0.807 or less	15%	7.5%
More than 0.807 but at most 0.820	14%	7.0%
More than 0.820 but at most 0.833	13%	6.5%
More than 0.833 but at most 0.847	12%	6.0%
More than 0.847 but at most 0.860	11%	5.5%
More than 0.860 but at most 0.873	10%	5.0%
More than 0.873 but at most 0.887	9%	4.5%
More than 0.887 but at most 0.900	8%	4.0%
More than 0.900 but at most 0.913	7%	3.5%
More than 0.913 but at most 0.927	6%	3.0%
More than 0.927 but at most 0.940	5%	2.5%
More than 0.940 but at most 0.953	4%	2.0%
More than 0.953 but at most 0.967	3%	1.5%
More than 0.967 but at most 0.980	2%	1.0%
More than 0.980 but at most 0.993	1%	0.5%
More than 0.993	none	none