

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

Bureau of Employment Programs
AGENCY: Workers' Compensation Division TITLE NUMBER: 85
RULE TYPE: Exempt Legislative; CITE AUTHORITY W. Va. Code §21A-2-6(1), -6(2) & -6(14); §21A-2-19; §21A-3-7(b) & -7(c); §23-1-1; §23-1-13; & 23-1-14
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: 25

TITLE OF RULE BEING PROPOSED: Medical reviews by the Interdisciplinary Examining Board

DATE OF PUBLIC HEARING: Monday, October 28, 1996 TIME: 1:30 p.m.

LOCATION OF PUBLIC HEARING: Large Conference Room
6th Floor
112 California Avenue
Charleston, West Virginia 25305

COMMENTS LIMITED TO: ORAL WRITTEN BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: John H. Kozak
By November 3, 1996

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.

Director, Legal Services Div.
P. O. Box 3922
Charleston, WV 25339-3922

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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Andrew H. Richardson
Authorized Signature

SUMMARY OF PROPOSED RULE
85 C.S.R. 25
MEDICAL REVIEW BY THE INTERDISCIPLINARY EXAMINING BOARD

This rule implements the provisions of West Virginia Code § 23-4-3(f) and -6(j)(3), under which the Interdisciplinary Examining Board serves as the final adjudicatory step within the Workers' Compensation Division for issues pertaining to managed care, cost containment, utilization review and general matters related to the authorization of and payment for medical treatment and diagnostic procedures. The Interdisciplinary Examining Board will issue a recommendation to the Workers' Compensation Division which will then enter an order based upon the recommendation. The Interdisciplinary Examining Board review serves as the final step in the administrative review process prior to the issuance of a final decision which may then be objected to by an aggrieved party and taken to hearing before the Workers' Compensation Office of Judges.

The rule sets forth the procedures before the Interdisciplinary Examining Board and the areas of the Interdisciplinary Examining Board's jurisdiction. Time periods for the review are stated. Finally, reconsiderations by the Interdisciplinary Examining Board will not be made unless previously existing material facts not previously in the record are presented to the Interdisciplinary Examining Board.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Series 25 Medical Reviews By The Interdisciplinary Examining Board

Type of Rule: X Legislative Exempt Interpretive Procedural

Agency Bureau of Employment Programs

Address 112 California Avenue

Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$390,000	\$0	\$390,000	\$390,000	\$0
PERSONAL SERVICES	390,000	0	390,000	390,000	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

We feel that minimal additional costs will be incurred with this rule. This additional cost represents a fee of \$1,500 per member of the IEB. We have made the assumption all five members of the IEB will hold meetings on a weekly basis.

3. Objectives of this rule:

The purpose of this rule is to implement the provisions of West Virginia Code 23-4-3(f) and 23-4-6(j) (3) regarding final review of medical cost containment decisions, utilization review decisions and managed care decisions arising under West Virginia Code 23-4-3.

Rule Title: Series 25 Medical Reviews By The Interdisciplinary Examining Board

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

It is expected that the impact of this rule will lead to more efficient management of claims. This could relate to savings from incorrect diagnoses or termination of inappropriate forms of treatment.

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

It is expected that the impact of this rule will reduce the charges to employer accounts and thus reduce premiums.

C. Economic Impact on Citizens/Public at Large.

This rule will not have a direct economic impact on the citizens of West Virginia.

Date: September 5, 1996

Signature of Agency Head or Authorized Representative

Andrew N. Richardson

Andrew N. Richardson

Commissioner, Bureau of Employment Programs

FILED

TITLE 85

SEP 10 8 28 AM '96

EXEMPT LEGISLATIVE RULE

BUREAU OF EMPLOYMENT PROGRAMS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WORKERS' COMPENSATION DIVISION

SERIES 25

MEDICAL REVIEWS BY THE INTERDISCIPLINARY EXAMINING BOARD

§85-25-1. General.

1.1. Scope. -- These rules implement the provisions of West Virginia Code § 23-4-3(f) and § 23-4-6(j)(3) regarding final review of medical cost containment, utilization review decisions and managed care decisions arising under West Virginia Code § 23-4-3.

1.2. Authority. -- West Virginia Code, §21A-2-6(1), -6(2) & -6(14); §21A-2-19; §21A-3-7(b) & -7(c); §23-1-1; §23-1-13 and §23-1-14. 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.

1.3. Filing Date.

1.4. Effective Date.

§85-25-2. Purpose.

The purpose of these rules is to implement the provisions of West Virginia Code § 23-4-3(f) and § 23-4-6(j)(3) regarding final review of medical cost containment decisions, utilization review decisions and managed care decisions arising under West Virginia Code § 23-4-3. Decisions arising under West Virginia Code § 23-4-3 are initially made by the workers' compensation division staff acting alone or in conjunction with a contractor. Pursuant to West Virginia Code § 23-4-3(f) these decisions are interlocutory in nature until the aggrieved party has exhausted all review processes provided for by the workers' compensation division. These rules provide for the final step in that review process at the conclusion of which a final order will be entered which may be objected to by any party to the claim pursuant to West Virginia Code § 23-5-1(b). These rules shall not be construed or applied to infringe upon the

authority granted by West Virginia Code § 23-4-3b and -3c to the health care advisory panel created pursuant to West Virginia Code § 23-4-3b.

§85-25-3. 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 of 1931, as amended.

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

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 § 2-2-5 and § 21A-2-12 & -13.

3.4. "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 as provided by West Virginia Code § 23-1-4.

3.5. "Division" means the workers' compensation division within the bureau of employment programs, West Virginia Code § 5F-2-1(b)(2), as provided for by §21A-1-4, and by West Virginia Code § 23-1-1 et seq.

3.6. "The interdisciplinary examining board" or "board" means the board created by West Virginia Code § 23-4-6(j).

§85-25-4. Subject matter of these rules.

4.1. West Virginia Code § 23-4-3 and the various other rules adopted by the division control the provision of health care services, rehabilitation services, durable medical goods and other goods and other supplies and medically related items as may be reasonably required for the treatment, care and rehabilitation of workers' compensation claimants. In addition, that section and adopted rules provide for the payment levels to reimburse the providers of such treatment, care and rehabilitation. The final decision of the workers' compensation division as to any disputes regarding the approval or denial of requests for any such treatment, care or rehabilitation or the payment level thereof shall be made based upon the recommendation of the Interdisciplinary Examining Board pursuant to West Virginia Code § 23-4-6(j)(3).

4.2. These rules do not confer upon the board the authority to change the fee schedule adopted by the division from time to time pursuant to West Virginia Code § 23-4-3(a). However, in those situations where the parties to the claim and the division have disagreed as to how the fee schedule should be applied to a given situation or whether, in the case of an out of state provider, the fee schedule should be deviated from, then the board will issue a recommendation to the division to resolve the dispute.

4.3. The board may be requested to issue final recommendations regarding the reasonableness and medical necessity for the provision of health care services, rehabilitation services, durable medical and other goods and other supplies and medically related items.

4.4. The board may be requested to issue final recommendations regarding the reasonableness or medical necessity of using name brand medications as opposed to generic versions for any disputes arising under West Virginia Code § 23-4-3(a)(3).

4.5. The board may be requested to issue final recommendations regarding the use of out of state health care providers arising under the provisions of West Virginia Code § 23-4-3(a)(4). Such issues shall include whether or not:

4.5.1. an urgent need existed for immediate medical attention in order to prevent the death of a claimant or to prevent serious and permanent harm to a claimant;

4.5.2. a claimant, who has received emergency treatment by an out of state provider, has attained a stable medical condition and is able to be transferred to either a West Virginia health care provider or an out of state provider who has agreed to accept the division's fee schedule; and

4.5.3. there is a health care provider reasonably near to the claimant's home who is qualified to provide the claimant's needed medical services and who is either located in West Virginia or who has agreed to accept the division's fee schedule as opposed to the utilization of an out of state health care provider who has not accepted the division's fee schedule.

4.6. The board may be requested to issue final recommendations regarding whether or not the health care services being provided or being refused by an approved employer established managed care program or by a managed care program established by the division are medically necessary and reasonable.

4.7. The board may be requested to issue final recommendations regarding whether or not the health care provider offered by any approved employer established managed care program is reasonably able to treat and care for a claimant.

4.8. The board may be requested to issue final recommendations regarding whether or not the replacement of artificial limbs, crutches, hearing aids, eyeglasses and all other medical appliances is medically necessary and reasonable due to the item having worn out, having become broken or being in need of refitting.

4.9. The board may be requested to issue final recommendations regarding whether or not a particular prescriptive medication should be provided to a claimant or whether or not a particular prescriptive medication should continue to be provided to a claimant.

4.10. The board may be requested to issue final recommendations regarding such other treatment, care or rehabilitation issues arising under West Virginia Code § 23-4-3 as may be in dispute between the parties to a claim and the division.

§85-25-5. Procedures.

5.1. Upon making any initial decision under the provisions of West Virginia Code § 23-4-3 or any rules adopted to carry out the provisions of that code section, the division shall issue an interlocutory order which shall inform the parties to the claim of their right to have a further review of the decision made. The interlocutory order shall provide the parties with a notice that the parties have thirty (30) days in which to request such further review.

5.2. If the division is utilizing the services of a contractor who provides its own internal appeal processes, then the interlocutory order shall direct the parties regarding the procedures to follow and the requisite time periods to follow.

5.3. If the interlocutory initial order directs that any particular treatment, care or rehabilitation service be provided to the claimant, then provision of that treatment, care or rehabilitation service shall not be delayed due to the possibility of a request for further review or by the actual filing of such a request under subsections 5.1, 5.2, or 5.4 of this section.

5.4. Upon the exhaustion of any further right of review that is offered by the division or by any contractor, the division shall inform the aggrieved party that it has a right to review of the decision by the Interdisciplinary Examining Board. The decision shall contain a statement that the aggrieved party has the

right to request the board to review the decision and to issue a final recommendation. The decision shall inform the aggrieved party that it has thirty (30) days in which to request such a review. The decision shall be mailed by the division by use of the regular United States postal system and shall be sent to all of the parties to the claim.

5.5. An aggrieved party must file its request in writing and it must be actually received by the board within the thirty (30) day time period stated in the earlier decision. The request must specifically identify the decision to which the request applies. The request should also designate the documents which it believes the board should review. Copies of those documents should be attached to the request. The request and attachments must be mailed to the other party or parties to the claim. The original of the request and five (5) copies must be mailed to the board and addressed as follows: The Interdisciplinary Examining Board, c/o The Legal Services Division, Post Office Box 3922, Charleston, WV 25329-3922. No additional copies of the request shall be sent to the commissioner, the director, or the division. In the event that the aggrieved party is proceeding without counsel and has not complied with this subsection, the division shall mail copies of the request to the other party or parties.

5.6. Upon receipt of the request, the other party or parties to the claim shall file a response to the request within fifteen (15) days of the request's receipt. The response shall designate those documents which the responder wishes the board to review. Copies of those documents should be attached to the request. The response and attachments must be mailed to the other party or parties. The original of the response and five (5) copies must be mailed to the board and shall be addressed as follows: the Interdisciplinary Examining Board, c/o The Legal Services Division, Post Office Box 3922, Charleston, WV 25329-3922. No additional copies of the request shall be sent to the commissioner, the director, or the division. No further filing by any party shall be made unless the board specifically requests further information.

5.7. The documents referenced by the parties shall constitute the record before the board. If the board identifies additional documents which it wishes to examine, then the final recommendation of the board shall identify those documents and they shall be added to the record.

5.8. In the event that the board finds that a further examination or examinations of the claimant is or are required in order to properly review the disputed decision, it may issue an interlocutory order directing that such further examination be conducted and directing who it wishes to conduct the examination. Such examination may be made by one or more of the board members. Any reports resulting from such further examination or examinations shall be included in the record as required by subsection 5.7 of this section.

5.9. Following its review of the designated documents, the board shall issue a final recommendation regarding the dispute to the division. The final recommendation shall be based upon the affirmative votes of at least three (3) of the board members. The division shall then issue a final decision to the parties which shall incorporate the findings and conclusions of the board. The order shall be subject to objection pursuant to the provisions of West Virginia Code § 23-5-1(b).

5.10. If any aggrieved party fails to request a further review of a disputed interlocutory decision as required by subsections 5.1, 5.2, or 5.3, then the disputed decision shall not be subject to further review or objection and all rights of any aggrieved party shall be deemed to have been waived.

§85-25-6. Reconsiderations.

The Interdisciplinary Examining Board will not reconsider any final recommendation unless material facts which existed in documentary form prior to the issuance of the final recommendation had not previously been brought to its attention. Allegations of error in its decision making process shall not constitute a basis for reconsideration.

§85-25-7. Severability.

If any provision or provisions of these rules or the application thereof to any entity or circumstance or circumstances 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.

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

Gaston Caperton
Governor
Andrew N. Richardson
Commissioner



September 3, 1996

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

Dear Secretary Hechler:

RE: Filing of Proposed Rule - Medical Reviews by the Interdisciplinary Examining Board, 85 C.S.R. 25.

Please consider this letter to be my written approval for the filing of the above noted proposed exempt legislative 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, the Commissioner of the Bureau of Employment Programs is empowered to promulgate rules without the further consent or approval of a departmental secretary.

With much appreciation for your assistance in this matter, I remain

Very truly yours,

A handwritten signature in cursive script that reads "Andrew N. Richardson".
Andrew N. Richardson
Commissioner