

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #1

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2005 MAR 16 P 4:01

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Workers' Compensation Commission TITLE NUMBER: 85

RULE TYPE: Exempt Legislative CITE AUTHORITY: §§23-1-1a(j)(3), 6-9A-3, 23-4-3b

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 26

TITLE OF RULE BEING AMENDED: Health Care Advisory Panel

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: April 19, 2005 TIME: 1:00 p.m.

LOCATION OF PUBLIC HEARING: 4101 MacCorkle Avenue, S.E.
Charleston, West Virginia

COMMENTS LIMITED TO: ORAL ☐, WRITTEN ☐, BOTH ☒
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

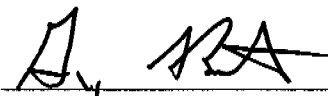
The Department requests that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments.

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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

T. J. Obrokta, General Counsel
Executive Offices
Workers' Compensation Commission
4700 MacCorkle Avenue, S.E.
Charleston, WV 25304

Fax # (304) 926-5372



Authorized Signature



Office of General Counsel
4700 MacCorkle Avenue, S. E.
Charleston, West Virginia 25304
Phone Number (304) 926-3423
Fax Number (304) 926-5441

March 16, 2005

The Honorable Betty Ireland
Secretary of State
State Capitol Complex
Building 1, Room W-157
Charleston, West Virginia 25305

Re: Proposed Rule
Title 85, Series 26
"Health Care Advisory Panel"

Dear Secretary Ireland:

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

Pursuant to Senate Bill 2013, Second Extraordinary Session, 2003, the Workers' Compensation Commission is established as a government entity separate from the Bureau of Employment Programs. The Board of Managers of the Workers' Compensation Commission has approved the enclosed 85 C.S.R. 26 for filing as a proposed rule of the Workers' Compensation Commission.

Thank you very much for your assistance in this matter.

Very truly yours,

Gregory A. Burton
Executive Director

Enclosure

**SUMMARY OF PROPOSED RULE
STATEMENT OF CIRCUMSTANCES
TITLE 85, SERIES 26
Health Care Advisory Panel**

Pursuant to Senate Bill 1004, First Special Session, 2005, the Health Care Advisory Panel ("HCAP") terminates upon termination of the Workers' Compensation Commission.

This rule is amended to address the termination of the Health Care Advisory Panel and to transition certain activities of HCAP to the Office of the Insurance Commissioner.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 85, Series 26, Health Care Advisory Panel

Type of Rule: X Legislative Exempt Interpretive Procedural

Agency Workers' Compensation Commission

Address 4700 MacCorkle Avenue, S.E.

Charleston, WV 25301

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$0	\$0	\$0	\$0	N/A
PERSONAL SERVICES	0	0	0	0	N/A
CURRENT EXPENSE	0	0	0	0	N/A
REPAIRS & ALTERNATIONS	0	0	0	0	N/A
EQUIPMENT	0	0	0	0	N/A
OTHER:					
Claims expense	0	0	0	0	N/A

2. Explanation of above estimates:

The Health Care Advisory Panel (HCAP) has been operating since 1993. The proposed changes to the existing rule address the transition of certain functions of the HCAP to the Insurance Commissioner upon termination of the Workers' Compensation Commission (commission). The above estimates are based on the assumption that the rule changes become effective in the current fiscal year (FY'05). Thru 12/31/05, the annual compensation and reimbursement of travel expenses for panel members appointed by the HCAP and the Executive Director should not change significantly from the costs that the commission has incurred for the HCAP to conduct its business and meetings prior to the transition period. Subject to the governor issuing the proclamation set forth in chapter twenty-three, article 2C of the Code of West Virginia that terminates the Workers' Compensation Commission, the HCAP would cease to exist and certain functions of the HCAP will be assumed by the Insurance Commission after 12/31/05.

3. Objectives of this rule:

The purpose of this rule is to define the function of the HCAP including the transition period from establishing an employers' mutual insurance company to terminating the Workers' Compensation Commission.

Rule Title: Title 85, Series 26, Health Care Advisory Panel

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

I It is expected that the there will be no economic impact on State Government. This rule defines the HCAP and the commission's role in fulfilling its duties and responsibilities during the transition period for establishing an employers' mutual insurance company as a result of enacting SB1004.

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

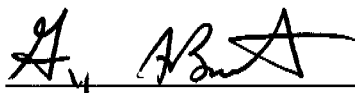
It is expected that there will be no impact from this rule.

C. Economic Impact on Citizens/Public at Large.

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

Date: 3-16-05

Signature of Agency Head or Authorized Representative



Gregory A. Burton
Executive Director, Workers' Compensation Commission

TITLE 85
LEGISLATIVE EXEMPT
WORKERS' COMPENSATION COMMISSION

SERIES 26
HEALTH CARE ADVISORY PANEL

FILED

2005 MAR 16 P 4:01

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§85-26-1. General.

1.1. Scope. -- This rule applies to the Health Care Advisory Panel, created pursuant to W. Va. Code §§23-4-3b. The purpose of this rule is to comply with the requirements of both W. Va. Code §§6-9A-3 and 29A-3-3. This rule sets forth the procedures by which the Panel will conduct its business. This rule defines the procedure for appointment of members and alternate members of the Panel. This rule further defines the authority of the Panel in carrying out its duties under the provisions of chapter twenty-three of the West Virginia Code [§§23-1-1 et seq.].

1.2. Authority. -- W. Va. Code §§6-9A-3, 23-1-1a(j)(3), 23-4-1 et seq., and 29A-3-3.

1.3. Filing Date. -- ~~November 24, 2004.~~

1.4. Effective Date. -- ~~January 1, 2005.~~

~~1.5. Repeal and replacement. This rule repeals and replaces 85CSR26 entitled, "Health Care Advisory Panel."~~

§85-26-2. Definitions.

As used in this rule, the following terms, words and phrases have the meanings stated below unless in any instance where such term, word or phrase is employed, the context clearly indicates that another meaning is intended.

2.1. "Chair" means the chairperson of the Health Care Advisory Panel.

2.2. "Commission" means the West Virginia Workers' Compensation Commission as provided for by W. Va. Code §23-1-1, et seq.

2.3. "Executive Director" means the Executive Director of the West Virginia Workers' Compensation Commission as provided pursuant to the provisions of W. Va. Code §23-1-1b.

2.4. "Panel" or "HCAP" means the Health Care Advisory Panel, established pursuant to W. Va. Code §23-4-3b.

2.5. "Sub-panel" means groups established under the authority of the Health Care Advisory Panel, which include members of the Panel and may include other members of the health care profession, which report back to the Panel.

2.6. "This rule" means the rule designated as W. Va. 85CSR26 entitled, "Health Care Advisory Panel."

§85-26-3. Appointments.

3.1. The Executive Director shall appoint not less than five members to the Health Care Advisory

Panel. Members of the Health Care Advisory Panel shall consist of representatives from among the various branches and specialties among health care providers in this state. Each member of the Panel serves at the will and pleasure of the executive director.

3.2. The Executive Director, from time to time, shall fix, by contract or otherwise, the compensation to be paid to each member of the Panel. The members are entitled to reasonable and necessary traveling and other expenses incurred while actually engaged in the performance of their duties.

§85-26-4. Chair; Vice Chair, Secretary.

4.1 The Executive Director shall annually appoint one member of the Panel to serve as its chair; the chair shall preside over the meetings of the Panel, communicate regularly with the Commission and assure that all administrative functions of the Panel are performed; the chair is also authorized to select persons who are not members of the Panel to serve on HCAP subpanels.

4.2. The members of the Panel may elect a vice chair to serve the Panel from among its regular members, to preside over meetings in the absence of the chair and to assist the chair in administrative functions. The term of the vice-chairperson shall be for one calendar year; from July 1 to June 30; but, the incumbent shall continue to serve until replaced. A vacancy may be filled by electing a new vice-chairperson for the remainder of a term. A member may be reelected as vice-chairperson.

4.3. The Executive Director shall assign an employee of the Commission to serve as secretary to the Panel; the secretary shall assure that the minutes of Panel meetings are recorded and preserved, and that meetings of the Panel comply with all requirements for public notice.

§85-26-5. Meetings; Conduct of Business.

5.1. Public meetings of the Health Care Advisory Panel may be called by the chairperson. The chairperson shall call a meeting upon the written request of a majority of the voting members of the Panel.

5.2. The chairperson shall notify Panel members in writing at least seven (7) days in advance of a meeting. The notice shall set forth the time and place of such meeting and the matters to be considered, except that such notice is not required if the time, the place, and the matters for consideration have been fixed in a meeting where all the members are present.

5.3. The chairperson shall notify the public and the news media by filing with the office of the Secretary of State a public notice of the meeting. The notice shall be filed in a manner so as to allow each notice to appear in the state register at least five days prior to the date of the meeting. The public notice shall contain the time, the place, and purpose of the meeting.

5.4. The provisions of this section shall not apply in the event of an emergency requiring immediate official action by the Panel. In the event of an emergency requiring immediate official action, the Panel may file an emergency meeting notice at any time prior to the meeting. The emergency meeting notice shall state the time, place, and purpose of the meeting and the facts and circumstances of the emergency.

5.5. Meetings may be continued to a set time and place by a majority vote of the Panel members present and voting without further notice to the members and without further publication unless such continued meeting is scheduled for more than fourteen (14) days from the date of the voting.

5.6. All members present at a meeting shall have the same right to participate in discussion of matters before the Panel.

5.7. The Panel shall consider any matter brought before it by the chairperson or any appointed member and may consider, at its discretion, any matter referred to it by a person not a member of the

Panel.

5.8. A meeting of the Panel may be conducted by telephonic means. In the event that a telephonic conference call is to be utilized, the notice shall so state and shall additionally state the time and date of the meeting as provided for in subsections 5.3 and 5.4.

5.9. A quorum shall exist for a meeting if a simple majority of appointed Panel members are present.

5.10. The Health Care Advisory Panel is authorized to meet in executive session as permitted by statute; the minutes of the public meeting shall reflect the reason for the move to executive session.

5.11. Members of the Health Care Advisory Panel shall keep confidential any claimant specific information which is made available to them.

§85-26-6. Sub-panels.

6.1. The Health Care Advisory Panel may establish sub-panels to assist in conducting HCAP business.

6.2. The sub-panel chair must be a regular member of the Health Care Advisory Panel.

6.3. The duties of the sub-panel shall be defined by the Panel chair, with consensus of HCAP.

6.4. The HCAP chair shall appoint members of sub-panels:

a. HCAP members may serve on sub-panels; and

b. At the discretion of the chair of the Health Care Advisory Panel and the agreement of the Executive Director, persons who are qualified by education and experience, who are not regular members of HCAP, may be appointed to serve on a sub-panel.

1. The Executive Director shall fix, by contract or otherwise, the compensation to be paid to each member of the Sub-panel, who is not a regular member of HCAP. The Sub-panel members are entitled to reasonable and necessary traveling and other expenses incurred while actually engaged in the performance of their duties.

6.5. Sub-panels shall meet on an ad hoc or scheduled basis, and may be discontinued upon determination by the HCAP that the functions for which the sub-panel was established no longer require the sub-panel.

6.6. Sub-panels shall not have any independent decision-making authority, but shall serve in an advisory capacity to the Health Care Advisory Panel.

§85-26-7. Minutes.

7.1. The Panel shall provide for the preparation of written minutes of all its meetings. All such minutes shall be available to the public within a reasonable time after the meeting and shall include the following information:

a. The date, time and place of the meeting;

b. The name of each Panel member present or absent;

c. All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the

person proposing the same and their disposition; and

- d. The results of all votes and, upon request of a member, the vote of each member, by name.

7.2. Minutes of executive sessions may be limited to material the disclosure of which is not inconsistent with the provisions of W. Va. Code §6-9A-4 listed above.

§85-26-8. Majority Vote Required; Vote by Proxy Prohibited.

The vote of a majority of all voting members present at any meeting of the panel shall be necessary to take any action.

§85-26-9. Records of the Panel - Public.

Records of the Panel are public records that may be inspected in accordance with W. Va. Code §29B-1-3 and copied in accordance with the Commission's established fees for producing requested records.

§85-26-10. Resignation.

Resignation from HCAP by any member shall be in writing to the Executive Director, with a copy to the chair, vice chair and secretary of HCAP.

§85-26-11. Preferred Drug List.

11.1. Purpose. In accordance with the provisions of the Workers' Compensation Act [23-4-3(a)(3)] that require pharmacists, filling a prescription for medication for a workers' compensation claimant, to dispense a generic brand of the prescribed medication if the generic brand exists and in accordance with HCAP's responsibility to establish guidelines for reasonably required health care treatment for occupational injuries and diseases, HCAP shall establish a Preferred Drug List (PDL) for the purposes of:

- a. Improving the quality of care of claimants by utilizing a PDL of generics and brand medications in the absence of generics;
- b. Affecting cost savings in the provision of health care services by determining what is reasonably required; and
- c. Optimizing pharmaceutical care and cost effectiveness.

11.2. Determinations. Considering the purposes the PDL, HCAP shall determine:

- a. Therapeutic classifications;
- b. Generic medications associated with each therapeutic class; and
- c. Certain brand name medications associated with each therapeutic class for which a generic medication is not available.

11.3. Medications prescribed that are not listed on the PDL are subject to the approval of the Commission. In determining whether to approve or not approve the prescription, the Commission shall consider whether any generic or brand name medication for the same therapeutic class is listed on the PDL. If a generic or brand name medication is listed for that therapeutic class, the Commission shall not authorize the prescription.

- a. Medications prescribed for off-label use shall not be approved.

b. "Off-label use" means that the medication is prescribed for a condition, which is inconsistent with the manufacturer's label or instructions.

11.4. Procedure. Determinations made by HCAP shall be made in the following manner.

a. HCAP shall make any determination or determinations at a public meeting or meetings held in accordance with the provisions of this rule.

b. The determinations shall be filed with the office of the secretary of state for publication in the state register pursuant to the provisions of W. Va. Code §29A-2-1 et seq.

11.5. Review. HCAP shall review the listings and classes of the PDL at least every six months as calculated from the effective date of this rule. The PDL may be reviewed and updated more often in the discretion of HCAP in accordance with the purposes and procedures contained within this section.

11.6. The current PDL, as adopted by HCAP, remains in force and effect in all existing and future claims until such time as HCAP adopts or revises the PDL.

§85-26-12. Transition.

12.1. The health care advisory panel shall remain in existence until the termination of the commission. Upon termination of the commission, the insurance commissioner shall assume the following functions of the health care advisory panel:

a. Establish guidelines for the health care which is reasonably required for the treatment of the various types of injuries and occupational diseases;

b. Establish protocols and procedures for the performance of examinations or evaluations performed by physicians or medical examiners; and

c. Establish guidelines regarding the anticipated period of disability for the various types of industrial injuries.

12.2. The insurance commissioner shall establish such guidelines and protocols for the medical management of claims and awards of disability which includes, but is not limited to, reasonable and standardized guidelines and parameters for appropriate treatment, expected period of time to reach maximum medical improvement and range of permanent partial disability awards for common injuries and diseases or incorporating by reference a plan or program for the medical and disability management of claims, as provided in W. Va. Code §23-4-3b(b), through the rule making process.

§85-26-13. 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.

