

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #5

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2004 NOV 24 P 2:09

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Workers' Compensation Commission TITLE NUMBER: 85

CITE AUTHORITY: W. Va. Code §§23-1-1a(j)(3), 23-4-3b

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W. Va. Code §§23-1-1a(j)(3)

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 RULE BEING PROPOSED: 26

TITLE OF RULE BEING PROPOSED: Health Care Advisory Panel [This rule repeals and
replaces the current 85 CSR 26 of the same name.]

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE

EFFECTIVE DATE OF THIS RULE IS January 1, 2005


Authorized Signature

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #1

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2004 SEP 21 P 3:28

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: W. Va. Code §§23-1-1a(j)(3); 23-4-3b

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 RULE BEING PROPOSED: 26

TITLE OF RULE BEING PROPOSED: Health Care Advisory Panel [Note: This proposed rule repeats and replaces the current 85 CSR 26 of the same name.]

DATE OF PUBLIC HEARING: October 26, 2004 TIME: 1:00 p.m.

LOCATION OF PUBLIC HEARING: Rooms 207-209
Charleston Civic Center
Charleston, West Virginia

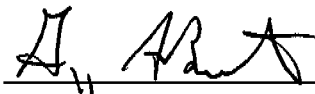
COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

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 Office
Workers' Compensation Commission
4700 MacGorkle Avenue, S.E.
Charleston, West Virginia 25304
Fax # (304) 926-5372



Authorized Signature



4700 MacCorkle Avenue, S. E.
Charleston, West Virginia 25304
Phone: (304) 926-3400

Gregory A. Burton, Executive Director

September 21, 2004

The Honorable Joe Manchin III
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 Manchin:

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. Pursuant to that same bill, the Board of Managers of the Workers' Compensation Commission has approved the enclosed 85 C.S.R. 26 entitled, "Health Care Advisory Panel," for filing as a proposed rule of the Workers' Compensation Commission.

Thank you very much for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'G. A. Burton'.

Gregory A. Burton
Executive Director

Enclosure

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

FILED

2004 SEP 21 P 3: 2

This rule repeals and replaces the provisions of 85 C.S.R. 26, entitled the same "Health Care Advisory Panel."

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Pursuant to Senate Bill 2013, Second Extraordinary Session, 2003, the Workers' Compensation Commission was created, effective October 1, 2003, as a stand-alone agency of State government. Under that Bill, the Commission is required to revise each of its rules prior to July 1, 2006. W. Va. Code § 23-1-1d.

Pursuant to Senate Bill 2013 and also effective October 1, 2003, the Compensation Programs Performance Council was abolished and replaced by the Workers' Compensation Commission's Board of Managers.

The proposed rule substantially revises the procedures related to the meetings and composition of the Health Care Advisory panel. The rule relates to:

- (1) The composition of the Health Care Advisory Panel;
- (2) The selection of officers;
- (3) How meetings are conducted;
- (4) The establishment of agendas;
- (5) How meetings are noticed to the public;
- (6) How executive sessions are conducted;
- (7) The establishment of sub-panels;
- (8) Minutes of the meetings; and
- (9) The establishment of Preferred Drug Lists.

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	Unknown	Decrease	Decrease	Decrease
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER:					
Claims expense	0	Unknown	Decrease	Decrease	Decrease

2. Explanation of above estimates:

The Health Care Advisory Panel (HCAP) has been operating since 1993. The proposed rule changes the number of members on the panel from 15 to, potentially, as few as 5, but does not change the basic authority and function of the HCAP. Consequently, the annual compensation and reimbursement of travel expenses for panel members as well as any additional sub-panel members appointed by the HCAP and the Executive Director should be comparable or somewhat less than the annual costs that the Commission has incurred for the HCAP to conduct its business and meetings prior to this rule. Any reduction in expenses that may be realized would be dependent on the number of panel and sub-panel members appointed, the number of meetings held each year and the compensation rate established for the members by the Executive Director. The proposed rule also allows the HCAP to establish a Preferred Drug List (PDL) that should affect additional medical cost savings. However, there is no historical data readily available to estimate the reduction in claims medical costs that will be realized as a result of establishing a PDL.

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

3. Objectives of this rule:

The purpose of this rule is to define the procedure for appointment of panel members and sub-panel members of the Health Care Advisory Panel and to further set forth procedures by which the panel will conduct its business.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

It is expected that this rule will lead to more efficient, thorough, and informed health care management by the Commission and will result in savings in workers' compensation medical costs.

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

It is expected that the rule will promote lower drug costs and improve medical claims management, and help to deter escalating medical costs for employers. Also, it is expected that better overall health care management will lead to better health care of injured workers, and assist in their return to the workforce.

C. Economic Impact on Citizens/Public at Large.

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

Date: _____

9-21-04

Signature of Agency Head or Authorized Representative



Gregory A. Burton

Executive Director, Workers' Compensation Commission

FILED

TITLE 85
WORKERS' COMPENSATION COMMISSION 2004 NOV 24 P 2:09

SERIES 26
HEALTH CARE ADVISORY PANEL 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. --

1.4. Effective Date. --

1.5. Repeal and replacement. -- This rule repeals and replaces 85 C.S.R. 26 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. 85 CSR 26 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 council 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. 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.

**APPEARANCES:
MEMBERS OF THE WEST VIRGINIA
WORKERS' COMPENSATION BOARD OF MANAGERS**

STEVE WHITE, Chairman

DOUGLAS MERRITT, Member

PAUL THOMPSON, Member

EVERETTE SULLIVAN, Member

GENE BAILEY, Member

BOB PHALEN, Member

MARGARET RICE, Recording Secretary

1 (P R O C E E D I N G S)

2 (1:00 P.M)

3 CHAIRMAN WHITE: I call the meeting to
4 order. Let the minutes reflect that we have a
5 quorum. This is a duly noticed public hearing of
6 the Workers' Compensation Board of Managers called
7 in relation to three rules that have been
8 previously passed and sent on to the Secretary of
9 State's office.

10 The purpose is to entertain public
11 comment with respect to these rules before this
12 Board of Managers has the opportunity to vote on
13 them later on in the month of November.

14 The first rule before us is Rule 26,
15 related to the Health Care Advisory Panel. Those
16 members of the audience that wish to speak with
17 respect to these rules, there have been notice
18 sheets posted in the back of the room that
19 hopefully you have already signed on these sheets
20 and if not, let me know and I will call you.

21 At this point in time, we are open
22 with respect to the public hearing on Rule 26,

1 Health Care Advisory Panel.

2 The attendance sheet did not
3 indicate anybody has decided to speak on this
4 rule. Is there anyone in the audience who wishes
5 to speak to this rule?

6 (No responses were given.)

7 CHAIRMAN WHITE: I declare the public
8 hearing closed with respect to Rule 26, Health
9 Care Advisory Panel.

10 (WHEREUPON, the hearing was
11 concluded at 1:05 p.m.)

RULE 26 AMENDMENT

Section 11.6 Insert "in all existing and future claims" between "effect" and "until".