

West Virginia
Secretary of State
Ken Hechler
Administrative Law Division

Do Not Mark In This Box

FILED

FEB 4 9 10 AM '97

Form #1

OFFICE OF THE
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 W. Va. Code §§ 23-4-3b and 23-4-7a

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: N/A

TITLE OF RULE BEING AMENDED: N/A

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 85 C.S.R. 26

TITLE OF RULE BEING PROPOSED: Health Care Advisory Panel

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

DATE OF PUBLIC HEARING: February 25, 1997

TIME: 10:00 a.m. - 3:00 p.m.

LOCATION OF PUBLIC HEARING: Charleston Civic Center - Room 202, Charleston, W. Va.

COMMENTS LIMITED TO: ORAL _____, WRITTEN _____, BOTH X

written comments through March 15, 1997

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

THE LAST DAY FOR WRITTEN COMMENTS IS MARCH 15, 1997

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

Carol A. Egnatoff, Counsel

Legal Services Division

Post Office Box 3922

Charleston, WV 25339-3922

(304) 926-5130

Andrew N. Richardson

Andrew N. Richardson,
Commissioner

Bureau of Employment Programs
Legal Services Division
Post Office Box 3922
Charleston, West Virginia 25339-3922

Cecil H. Underwood
Governor

Andrew N. Richardson
Commissioner



January 30, 1997

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

RE: Proposed Exempt Legislative Rule
Title 85, Series 27
"Qualified Rehabilitation Provider"

Dear Secretary Hechler:

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

ANR:CAE:pc

Summary of Proposed
Exempt Legislative Rule
"Health Care Advisory Panel"
Title 85, Series 26

This proposed exempt legislative rule provides for appointment of members to the Health Care Advisory Panel, in accordance with the provisions of West Virginia Code § 23-4-3b.

The proposed rule describes the composition of the Panel, with members representative of various health care practices.

The proposed rule provides for term duration and limits for Panel members.

The proposed rule provides for ex officio membership by the chair of the Occupational Pneumoconiosis Board and the chair of the Interdisciplinary Examining Board.

The proposed rule provides for a chair, vice-chair and secretary to the Panel.

The proposed rule describes the frequency and conduct of meetings of the Panel.

The proposed rule authorizes subpanels of the Health Care Advisory Panel.

The proposed rule describes the procedure for resignation by a member of the Health Care Advisory Panel.

FISCAL NOTE FOR PROPOSED RULES

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

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>	\$0	\$0	\$0	\$0	\$0
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	0	0	0	0	0

2. Explanation of above estimates:

The Health Care Advisory Panel has been operating since 1993. All panel member contracts specify a rate of \$250 per meeting plus \$100 per hour for other services as approved and required, with a maximum of \$10,000 each for the year. The chairman is allowed a maximum of \$20,000 for the year. Under current contracts, a maximum of \$210,000 annually is allowed as follows:

Panel chairman	\$ 20,000
14 panel members	140,000
3 subpanel members	30,000
1 alternate panel member	10,000
Satellite conferencing service	<u>10,000</u>
	<u>\$210,000</u>

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 members and alternate 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 Division, and will result in savings in medical and rehabilitation costs.

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

It is expected that with lower claims costs, employers should enjoy lower premium rates.

C. Economic Impact on Citizens/Public at Large.

It is expected that better health care management will lead to better health care of injured workers, allowing them to return quickly to the workforce.

Date: January 30, 1997

Signature of Agency Head or Authorized Representative

Andrew N. Richardson
Andrew N. Richardson
Commissioner, Bureau of Employment Programs

TITLE 85
PROCEDURAL RULE
WORKERS' COMPENSATION COMMISSIONER

SERIES 26
HEALTH CARE ADVISORY PANEL

FILED

FEB 4 9 10 AM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§85-26-1. General.

1.1. Scope. - This procedural rule defines the procedure for appointment of members and alternate members of the Health Care Advisory Panel, and further sets forth the procedures by which the Panel will conduct its business.

1.2. Authority. - W.Va. Code § 23-4-3b and §23-4-7a.

1.3. Filing Date. - _____

1.4. Effective Date. - _____

§85-26-2. Definitions.

2.1. As used in this procedural 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.

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

2.1.2. "Commissioner" means the Commissioner of the West Virginia Bureau of Employment Programs, appointed pursuant to West Virginia Code Section one, Article one, Chapter twenty three.

2.1.3. "Licensed" means that the described health care professional holds an active, unencumbered West Virginia license to practice the profession by which he or she qualifies for appointment to the Panel.

2.1.4. "Panel" or "HCAP" means the Health Care Advisory Panel, established pursuant to West Virginia Code Section three-b, Article four, Chapter twenty three.

2.1.5. "Physician" means an allopathic physician licensed by the West Virginia Board of Medicine, or an osteopathic physician licensed by the West Virginia Board of Osteopathy.

2.1.6. "Regular member" means a member of the Health Care Advisory Panel appointed to serve in all full Panel functions, as contrasted with an alternate member, who votes only in the absence of the corresponding regular member.

2.1.7. "Subpanel" means groups established under the authority of the Health Care Advisory Panel, which include members of the Panel and which report back to the Panel.

2.1.8. "This rule" means the instant procedural rule, designated as W.Va. 85 CSR 26, §85-26-1 et seq.

§85-26-3. Appointments.

3.1. The Commissioner shall appoint not less than five members to the Health Care Advisory Panel.

3.2. The members appointed by the Commissioner shall include:

3.2.1. A licensed physician specializing in orthopedic medicine and

surgery and certified by the American Board of Orthopedic Surgery or by the American Osteopathic Board of Orthopedic Surgery;

3.2.2. A licensed physician specializing in the practice of psychiatry and certified by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Neurology and Psychiatry;

3.2.3. A licensed physician specializing in the practice of occupational medicine and certified by the American Board of Preventive Medicine - Occupational Medicine or by the American Osteopathic Board of Preventive Medicine- Occupational Medicine;

3.2.4. A licensed physician specializing in the practice of physical medicine and certified by the American Board of Physical Medicine and Rehabilitation or by the American Osteopathic Board of Rehabilitation Medicine;

3.2.5. A licensed physician specializing in the practice of otolaryngology and certified by the American Board of Otolaryngology or by the American Osteopathic Board of Ophthalmology and Otorhinolaryngology;

3.2.6. A licensed physician specializing in the practice of neurosurgery and certified by the American Board of Neurological Surgery and by the American Osteopathic Board of Surgery - Neurological Surgery;

3.2.7. At least one physician member of the Panel shall be certified by the American Board of Family Practice or the American Board of Internal Medicine or by the American

Osteopathic Board of Family Physicians or the American Osteopathic Board of Internal Medicine.

3.2.8. A qualified rehabilitation professional (QRP) recognized by the Division pursuant to WV CSR Title 85, Series 27;

3.2.9. A chiropractor licensed by the West Virginia Board of Chiropractic Examiners;

3.2.10. A physical therapist licensed by the West Virginia Board of Physical Therapy;

3.2.11. A pharmacist registered with the West Virginia Board of Pharmacy; and

3.2.12. A licensed registered nurse with experience in the care of industrial injuries.

3.2.13. At least one physician member of the Panel shall be an osteopathic physician whose current practice includes osteopathic manipulative medicine.3.3.

Appointment to the Panel shall be for a term of six years, except that initial appointments to the Panel shall be made for one third of the members to serve two year terms, one third shall be appointed to four year terms, and one third shall be appointed to six year terms; all terms shall revert to six years in length at the conclusion of these initial appointments.

3.4. Members may be appointed to the Panel for up to three consecutive full terms; there is no limit to the number of non-consecutive or partial term appointments.

3.5. An appointment to fill a vacancy in an unexpired term shall be for the duration of the term.

3.6. The Commissioner shall appoint alternate Panel members to assure that the Panel may function in the absence or abstention of one or more regular members.

3.6.1. Alternate members will be appointed to serve in the absence of specific Panel members.

3.6.2. Alternate members may attend any meeting of the Health Care Advisory Panel, including any executive portion of any meeting.

3.6.3. Alternate members may vote on any matter coming before the Panel, so long as the member for whom the alternate serves is not present and does not vote.

3.6.4. The terms of alternate members shall be six years in length, and shall coincide with the terms of the regular Panel members for whom each alternate is appointed.

3.7. The Panel shall include ex officio members, who will be entitled to attend any regular or executive session of the Panel and to participate in Panel discussion, but will not vote on matters before the Panel for decision.

3.7.1. The Chair of the Occupational Pneumoconiosis Board or his or her designee shall sit as an ex officio member of the Panel.

3.7.2. The Chair of the Interdisciplinary Examining Board or his or her designee shall sit as an ex officio member of the Panel.

§85-26-4. Chair; vice chair, secretary.

4.1. The Commissioner 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 Division 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.

4.3. The Commissioner shall assign an employee of the Workers' Compensation Division 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 shall be held monthly; meetings may be held in conjunction with another Panel function, such as an educational program.

5.2. A quorum shall exist for a meeting if at least four Panel members or alternates are present.

5.3. Matters before the Panel shall be decided through the consensus of the group, except that:

5.3.1. The chair may, at his or her discretion, invoke Robert's Rules of Order; or

5.3.2. A simple majority of the members present may vote to invoke Robert's Rules of Order; or

5.3.3. A simple majority of the members present may vote to override a decision by the chair to invoke Robert's Rules of Order.

5.4. 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.

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

§85-26-6. Subpanels.

6.1. The Health Care Advisory Panel may establish subpanels to assist in conducting HCAP business.

6.2. The subpanel chair must be a regular member of the Health Care Advisory Panel.

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

6.4. The HCAP chair shall appoint members of subpanels:

6.4.1. HCAP regular and alternate members may serve on subpanels;

6.4.2. At the discretion of the chair of the Health Care Advisory Panel, persons who are qualified by education and experience who are not regular nor alternate members of HCAP may be appointed to serve on a subpanel.

6.5. Subpanels shall meet on an ad hoc or scheduled basis, and may be discontinued upon determination by the HCAP that the functions for which the

subpanel was established no longer require the subpanel.

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

6.7. A Recommendation from a subpanel to the Health Care Advisory Panel will become effective only upon acceptance by HCAP.

§85-26-7. Resignation.

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