

West Virginia
Secretary of State
Ken Hechler
Administrative Law Division

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Form #1

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 W. Va. Code §§21A-2-6(1), 21A-2-6(2) & 21A-2-6(14); 21A-2-19; 21A-3-7(b) & 21A-3-7(c) and 23-1-1

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: 28

TITLE OF RULE BEING PROPOSED: Multiple Chemical Sensitivity

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

DATE OF PUBLIC HEARING: November 18, 1997

TIME: 10:00 a.m.

LOCATION OF PUBLIC HEARING: Charleston Civic Center, Room 206
Charleston, W. Va.

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

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

Carol A. Egnatoff, Senior Counsel
Legal Services Division
Post Office Box 3922
Charleston, W. Va. 25339-3922
(304) 926-5130

The Last Day For Written Comments is December 1, 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

Summary of Proposed Rule

Multiple Chemical Sensitivity

The terms "Multiple Chemical Sensitivity" and "Total Allergy Syndrome" have been used to describe a variety of different clinical presentations. The symptoms alleged to be due to multiple chemical sensitivity vary widely, with the most consistent characteristic being the lack of objective diagnostic criteria for the overall syndrome.

This proposed new rule recognizes that individuals may suffer from specific ailments which are more readily identified by standard diagnostic examination and testing, such as asthma or dermatitis.

This proposed new rule provides for treatment of these specific conditions, but does not recognize that a collection of one or more of these conditions can be treated as a syndrome, multiple chemical sensitivity.

This proposed new rule provides that the diagnosis of multiple chemical sensitivity will not cause benefits to be granted or denied. The multiple chemical sensitivity diagnosis may be included in the claim file, but determination(s) of benefits will be based upon recognized diagnoses.

FISCAL NOTE FOR PROPOSED LEGISLATIVE RULES

Rule Title: Title 85 Series 28: Multiple Chemical Sensitivity

Type of Rule: ☒ Legislative Exempt ☐ Interpretive ☐ Procedural

Agency: Bureau of Employment Programs
Workers' Compensation Division

Address: 112 California Avenue
Charleston, WV 25305

1. Effect of Proposed Rule

	Annual		Fiscal Year		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$0	Unknown	Unknown	Unknown	Unknown
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:					
Benefit payments	0	Unknown	Unknown	Unknown	Unknown

2. Explanation of above estimates:

Implementation of this rule will not require any change in general and administrative expenses. Because this rule establishes the non-compensability of a medical condition, it is expected to save an unknown amount in benefits that may have been paid without the defining guidance of this rule.

3. Objectives of this rule:

This rule establishes the policy and procedure of the Workers' Compensation Division related to claims alleging work-related multiple chemical sensitivity.

Rule Title: Title 85 Series 29: Outpatient Management of Chronic Pain

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

It is expected that this rule will contribute toward more efficient, thorough, and informed health care management by the Workers' Compensation 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 will receive lower premium rates.

C. Economic Impact on Citizens/Public at Large.

It is expected that better health care management will contribute toward better health care of injured workers.

Date: 10/10/87

Signature of Agency Head or Authorized Representative

William F. Vieweg
William F. Vieweg
Commissioner, Bureau of Employment Programs

TITLE 85
LEGISLATIVE RULE
WORKERS' COMPENSATION DIVISION

SERIES 28
MULTIPLE CHEMICAL SENSITIVITY

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§85-28-1. General.

1.1 Scope. -- This rule establishes the policy and procedure of the Workers' Compensation Division related to claims alleging work-related Multiple Chemical Sensitivity, as determined by the Workers' Compensation Division Health Care Advisory Panel.

1.2. Authority. -- W.Va. Code §§21A-2-6(1), -6(2) & -6(14); 21A-2-19; 21A-3-7(b) & -7(c) and 23-1-1. Pursuant to W.Va. 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 W.Va. 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. -- _____

§85-28-2. Purpose of Rule.

The purpose of this rule is to implement the provisions of W.Va. Code, §23-4-3(a)(1), §23-4-3a, §23-4-3b, §23-4-3c which relate to the development of guidelines for the provision of health care services. West Virginia Code § 23-4-3b(a) provides that the Health Care Advisory Panel shall "establish guidelines for the health care which is reasonably required for

the treatment of the various types of injuries and occupational diseases within the meaning of section three [§23-4-3] of this article." This rule is intended to insure that the care which is provided to claimants is medically indicated and consistent with the best health care information available. Pursuant to W.Va. Code § 23-4-9, "it is a goal of the workers' compensation program to assist workers to return to suitable gainful employment after an injury." This rule, therefore, is further intended to promote health care services which are likely to improve an injured worker's likelihood of returning to gainful employment, rather than services which are likely to promote more prolonged disability and diminish the worker's opportunities in the workplace.

§85-28-3. Definitions.

As used in this legislative rule, the following terms have the stated meanings unless the context of a specific use clearly indicates another meaning is intended.

3.1. "Commissioner" means the Commissioner of the Bureau of Employment Programs.

3.2. "Division" shall refer to the Workers Compensation Division of the Bureau of Employment Programs.

3.3. "HCAP" means the Health Care Advisory Panel.

3.4. "MCS" stands for "Multiple Chemical Sensitivity".

3.5. "Multiple Chemical Sensitivity" means a syndrome, also known as Total Allergy Syndrome, Multiple Organ Dysaesthesia, chemical sensitivity, environmental illness, cerebral allergy, universal allergy, and other synonyms,

which is acquired in relation to some environmental exposure(s), which is without objective physiologic basis or reputable or widely accepted epidemiologic causation, which affects multiple organ systems and for which there is no single widely available test of organ system function to explain symptoms. Symptoms are elicited by exposures to chemicals of diverse structural classes and toxicologic modes of action, at levels that are usually demonstrable, although many standard deviations below average exposures known to cause adverse human responses.

§85-28-4. Compensability.

A diagnosis of Multiple Chemical Sensitivity is not a compensable condition, due to the absence of both physiologic basis for assessment and widely accepted etiologic cause in the workplace established by objective means.

§85-28-5. Lack of compensability for Multiple Chemical Sensitivity not dispositive of other issues.

The presence of a diagnosis of Multiple Chemical Sensitivity does not disqualify the injured worker from compensation for illness and suffering which may have been identified in arriving at the diagnosis; the fact of an MCS diagnosis is neutral, and reflects a lack of information content.

§85-28-6. Other conditions compensable.

6.1. Workers who carry an MCS diagnosis may be compensated for other conditions which can be established objectively, such as asthma, bronchitis, porphyria (if demonstrated convincingly and plausibly caused by work), dermatitis, or organic brain syndrome.

6.2. In each case, the usual standards of diagnostic proof and etiologic workplace causation apply.

§85-28-7. Consultation.

Claims managers handling MCS claims will have consultation available with outside medical experts in claims in which the diagnosis suggests controversy.

Cecil H. Underwood
Governor

William F. Vieweg
Commissioner



West Virginia Bureau of Employment Programs

- Job Service/Job Training Programs • Labor Market Information
- Unemployment Compensation • Workers' Compensation

an equal opportunity/affirmative action employer

October 10, 1997

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

Dear Secretary Hechler:

RE: Approval of Final Filing of Exempt Legislative Rule
"Multiple Chemical Sensitivity"
85 CSR 28

Pursuant to West Virginia Code § 5F-2-1(b)(2), the Bureau of Employment Programs is not part of an executive department of state government and is not subject to the control of a departmental secretary.

Pursuant to West Virginia Code §§ 21A-2-6 and 23-1-1, the Commissioner of the Bureau of Employment Programs has the authority to promulgate rules that have been approved by the Compensation Programs Performance Council pursuant to West Virginia Code §21A-3-7.

Accordingly, please accept this letter as my formal approval for the initial filing of the above designated exempt legislative rule.

Sincerely,


William F. Vieweg
Commissioner

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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Legal Services Division

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