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

Form #5

Do Not Mark In This Box

FILED

2004 JAN 29 P 2:59

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); 23-4-3

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 X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 28

TITLE OF RULE BEING AMENDED: Rules for Health Care Vendor Hearings

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE EFFECTIVE DATE OF THIS RULE IS March 1, 2004

Authorized Signature

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

Form #1

Do Not Mark In This Box

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Workers' Compensation Commission TITLE NUMBER: 85

RULE TYPE: Exempt Legislative CITE AUTHORITY: Code § 23-1-1a(j)(3); 23-4-3c

AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 28

TITLE OF RULE BEING AMENDED: Rules for Health Care Vendor Hearings

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ____

TITLE OF RULE BEING PROPOSED: ____

DATE OF PUBLIC HEARING: December 17, 2003 TIME: 11:00 a.m.

LOCATION OF PUBLIC HEARING: Rooms 207-209
Charleston Civic Center
Charleston, West Virginia
**This public hearing is an extension and continuance of the previous comment period for this proposed rule.

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

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

T.J. Obrokta, General Counsel
Executive Offices
Workers' Compensation Commission
~~4700 MacCorkle Avenue, S.E.~~
Charleston, WV 25304
Fax # (304) 926-5372

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

Authorized Signature

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

Form #2

Do Not Mark In This Box

NOTICE OF A COMMENT PERIOD 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); 23-4-3c

AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 28

TITLE OF RULE BEING AMENDED: Rules for Health Care Vendor Hearings

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ____

TITLE OF RULE BEING PROPOSED: ____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON December 12, 2003 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

T.J. Obrokta, General Counsel
Workers' Compensation Commission
4700 MacCorkle Avenue, S.E.
Charleston, WV 25304
Fax # 304-926-5372

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

WCC Insuring a Working West Virginia
Workers' Compensation Commission
Gregory A. Burton, Executive Director

4700 MacCorkle Avenue, S. E.
Charleston, West Virginia 25304
Phone: (304) 926-1710

November 6, 2003

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 28
"Rules for Health Care Vendor Hearings"

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 have approved the enclosed 85 C.S.R. 28 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

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 85, Series 28: Rules for Health Care Vendor Hearings

Type of Rule: ____Legislative Exempt ___Interpretive _X_Procedural

Agency Workers' Compensation Commission

Address 4700 MacCorkle Ave. S.E.

Charleston, WV 25304

---

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	Unknown	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: Provider and benefit payments Professional services	 0 Unknown	 Unknown 0	 Unknown Unknown	 Unknown Unknown	 Unknown Unknown

2. Explanation of above estimates:

An undeterminable amount of additional costs would result from reviewing any health care provider's medically unsupported recommendations regarding a percentage of disability or who has prescribed medically unsupported medical treatment, including medications. Other additional costs incurred would be related to the Commission's expenses involved with any resulting hearing petitions and final decisions such as attorney fees, service fees, fees for attendance at hearings, consultation fees, etc. Primarily the number and the complexity of the petitions for hearings that are filed would affect the total additional amount of costs associated with implementing the proposed rule. Provider and benefit payments would decrease by an undeterminable amount from the recoveries made on any inappropriate or unnecessary amounts previously paid to health care vendors and claimants.

3. Objectives of this rule:

The purpose of the proposed rule is to define and describe the procedures for administrative hearings for disputed issues between the Workers' Compensation Commission and health care providers.

4. **Explanation of Overall Economic Impact of Proposed Rule.**

A. Economic Impact on State Government.

It is expected that this rule should contribute toward more effective health care treatment by qualified health care vendors utilized by the Workers' Compensation Commission and will result in reducing unnecessary or inappropriate costs associated with medical treatment provided, including medication and unsupported disability recommendations.

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

It is expected that the proposed rule will improve and maintain the overall quality of health care treatment provided to injured workers.

C. Economic Impact on Citizens/Public at Large.

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

Date: November 6, 2003

Signature of Agency Head or Authorized Representative

Gregory A. Burton
Executive Director, Workers' Compensation Commission

SUMMARY OF PROPOSED RULE
STATEMENT OF CIRCUMSTANCES
TITLE 85, SERIES 28
WORKERS' COMPENSATION DIVISION
RULES FOR HEALTH CARE VENDOR HEARINGS

This rule sets forth the procedures for administrative hearings for disputed issues between the Workers' Compensation Division and health care providers.

This rule was originally promulgated in 2003 and became effective May 5, 2003. The rule was developed to deal with audits of medical providers. In addition, the rule provided a methodology to terminate or suspend a vendor.

The basis for the rule is W. Va. Code § 23-4-3c. Effective July 1, 2003, this section changed pursuant to Senate Bill 2013. New language requires the Commission to "establish criteria for determining whether recommendations or treatment are medically unsupported." The rule was revised to include the required criteria.

In addition, the rule was revised to clarify the "medical experts" that the executive director may consult in determining whether a health care provider should be suspended or terminated.

The rule also provides for the Hearing Examiner to enter a scheduling order to lay out the pre-hearing process prior to the scheduled hearing.

Changes to the rule were also made to reflect new terminology consistent with the new law, i.e. commission, executive director.

~~Title 85~~

~~Procedural Rule~~

~~Workers' Compensation Division~~

~~Series 28~~

~~Rules for Health Care Vendor Hearings~~

TITLE 85
EXEMPT LEGISLATIVE RULE
WORKERS' COMPENSATION COMMISSION
SERIES 28
RULES FOR HEALTH CARE VENDOR HEARINGS

§85-28-1. General.

~~1.1.~~ 1.1 Scope. -- This rule sets forth the procedures for administrative hearings for disputed issues between the ~~workers'~~workers' compensation ~~division~~Commission and health care providers.

1.2. Authority. -- W.Va. Code~~§21A-2-6(1), -6(2) & -6(14); §21A-2-19; 21A-3-7(b) & -7(c) §23-1-1;~~ §23-4-3; §23-4-3c. Pursuant to W. Va. Code, ~~§21A-3-7(c),~~§23-1-1a(j)(3), rules adopted by the~~compensation programs performance council and the commissioner~~Workers Compensation Board of Managers 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, 1999 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.~~1.3 Filing date. --~~April 3, 2003.~~

~~1.4.~~1.4 Effective Date. --~~May 5, 2003.~~

§85-28-2. Definitions.

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

2.1 "Agent" means a private company retained by the ~~division~~Commission to audit, identify and collect medical vendor overpayments.

2.2. "Act" means the workers' compensation laws of the State of West Virginia that are codified at chapter twenty-three of the Code of West Virginia.

2.3. "Hearing Officer" refers to an objective trier of fact who will be conducting a de novo administrative hearing in a health care vendor issues arising between the workers' compensation ~~division~~Commission and a registered health care vendor~~s~~.

2.4. "Code of West Virginia" and "West Virginia Code" means the West Virginia Code of 1931 as amended.

2.5. ~~"Commissioner" means the commissioner of the bureau of employment programs pursuant to W.Va. Code §21A-2-1 and 21A-2-12 & 13.~~"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.

2.6. ~~"Division" means the workers' compensation division within the bureau of employment programs~~"Commission" means the West Virginia Workers' Compensation Commission as provided for by W. Va. Code ~~§21A-1-4 and 23-1-1~~§23-1-1, et seq.

2.7. "Health Care Vendor" or Health Care Provider" refers to health care providers, including providers of rehabilitation services within the meaning of W. Va. Code §23-4-9, both in- and out-of-state who have signed provider agreements with West Virginia workers' compensation ~~division~~Commission to provide health care to injured workers.

2.8. "Office of Judges" refers to the ~~bureau of employment programs office of judges,~~Office of Judges, as set forth in W. Va. Code §23-5-8.

2.9. "This rule" means the present ~~procedural~~exempt legislative rule that is designated in the caption here as title 85, series 28.

§85-28-3. Overpayments: Notification and Reconsideration.

3.1 Notification of decision. The ~~division~~Commission shall notify each health care vendor of any alleged overpayment by United States mail, first class, postage pre-paid.

3.1.a. In overpayment matters the notification shall detail and provide an itemized statement of the alleged overpayment and the audit reason.

3.1.b. The notification shall include language to inform the health care provider that it is afforded the right to file a request for reconsideration of the decision and provide an address where the request for reconsideration shall be filed.

3.1.c The notification may be sent by the ~~division's~~Commission's agent. The notification may require that the request for reconsideration be filed with the ~~division's agent.~~Commission's agent or the Commission as specified in the notification.

3.2 Undisputed amounts. If the findings of overpayment contained within the notification are not disputed by the health care ~~vendor. The~~vendor, then the health care vendor is required to remit payment in full within sixty (60) calendar days of the notification date.

3.2.a. Upon receipt of a request from the health care vendor and a showing of undue hardship, the ~~division~~Commission may enter into a repayment agreement with the health care provider. The repayment agreement shall not extend for a period in excess of twelve (12) months and shall provide for the payment of principal and interest. Interest shall be calculated in the same manner as provided in the provisions of W. Va. Code §23-2-13.

3.3 Request for reconsideration. Each health care provider who desires to dispute an overpayment decision is required to file a complete and timely request for reconsideration as a condition precedent to filing a petition for hearing.

3.4. Time limits. A request for reconsideration shall be filed with the ~~division~~Commission within thirty (30) days of the health care provider's receipt of notice of the disputed ~~division's~~Commission's decision or action or, in the absence of such a receipt, within sixty (60) days of the date of the ~~division's~~Commission's making such disputed decision or taking such disputed action. Such time limitations are a condition of the right to litigate the decision or action and are jurisdictional.

3.5. Contents of the request for reconsideration. In its request for reconsideration, the health care provider shall clearly identify the decision or action disputed. The health care provider shall also clearly identify the bases upon which the health care provider disputes the decision or action.

3.6. Review. Upon the filing of a health care provider's request for reconsideration, the ~~division~~Commission or its agent shall review the bases for the request. Such a review may include a meeting with the health care provider, a review of the health care provider's records, or any other process calculated to provide the ~~division~~Commission with the relevant information necessary to perform its review. After reviewing the request, the ~~division~~Commission shall enter its final decision.

3.6.a. The ~~division~~Commission is required to enter a final decision or enter into an extension agreement with the health care provider within one hundred-twenty (120) days from the date the provider's request for reconsideration is filed.

3.6.b. The ~~division~~Commission and the health care provider may enter into a written extension agreement to provide no more than an additional sixty (60) days for the ~~division~~Commission to enter a final decision.

~~3.6.c. The division's~~3.6.c. The Commission's failure to enter a final decision within the initial time period or extended time period, where applicable, triggers a health care provider's right to file a petition for hearing.

3.7. Effect of filing. The filing of a timely and complete request for reconsideration of a written decision or action of the ~~division~~Commission stays the tolling of the time limitations for filing a petition for hearing until the final decision is issued.

3.8. Example. The health care provider receives a decision from the ~~division.~~Commission. The health care provider desires to dispute the decision or action. The health care provider must file a request for reconsideration of the decision or action and await the ~~division's~~Commission's final decision in the matter, the expiration of the one hundred-twenty (120) day period for the ~~division~~Commission to issue a final decision, or the expiration of such additional written time extension agreement as limited by this rule. The final decision may be contested by filing a petition for hearing. Should the health care provider fail to file a timely and complete request for reconsideration, then the ~~division's~~Commission's decision or action becomes final.

§85-28-4. Suspension or Termination.

4.1 Consultation. The Executive Director shall consult with any of the following medical experts for purposes of determining whether a health care provider should be suspended or terminated pursuant to West Virginia Code Section 23-4-3c:

1) Medical experts in the Workers' Compensation Commission's Office of Medical Services, including the Director or Associate Director;

2) The Health Care Advisory Panel, or one or more of its members; or

3) Any other medical expert selected by the Executive Director, in his or her sole discretion.

~~4.1.~~4.2 Notification. When the ~~division~~Commission determines that there is probable cause to believe that a health care provider should be suspended or terminated under the provisions of W. Va. Code §23-4-3c, the ~~division~~Commission may proceed with the suspension or termination and shall thereafter provide written notice to the health care provider by United States mail, first class, postage pre-paid.

~~4.1.a.~~4.2.a. The written notice shall state the nature of the charges against the health care provider and the action taken or to be taken by the ~~division.~~Commission.

~~4.1.b.~~4.2.b. The written notice shall state a time and place at which the health care provider shall appear to show cause why its right to receive payment from the workers'

compensation ~~division~~Commission for treatment of injured workers under W. Va. Code §23-1-1 et seq. should not have been or should not be suspended or terminated.

~~4.1.c.~~4.2.c. The written notice shall inform the health care provider that it is afforded the opportunity to review the ~~commissioner's~~Commission's evidence, to cross-examine the ~~commissioner's~~Commission's witnesses, and to present testimony and evidence in support of its position.

~~4.2.~~4.3. Final decision. Each notification of suspension or termination shall be considered a final decision of the ~~division.~~Commission.

§85-28-5. Final decision; Petition for Hearing.

5.1. Notice of final decision. The ~~division~~Commission shall notify each health care vendor of its final decision by United States mail, first class, postage pre-paid.

5.1.a. The notice of final decision shall include language to inform the health care provider that it is afforded the right to file a petition for hearing of the decision and provide an address where the request for reconsideration shall be filed.

5.2. Time limits. A petition for hearing shall be filed with the ~~division~~Commission within thirty (30) days of the health care provider's receipt of notice of the disputed decision or action or, in the absence of such a receipt, within sixty (60) days of the date of the ~~division's~~Commission's making such disputed decision or taking such disputed action. Such time limitations are a condition of the right to litigate the decision or action and are jurisdictional.

5.3. Contents of the petition for hearing. In its petition for hearing, the health care provider shall:

(1) clearly identify the decision or action disputed;

(2) clearly identify the bases upon which the health care provider disputes the decision or action; and

~~(3)~~(3) provide a summary of documentation supporting the health care provider's position.

5.4. Collection of an alleged overpayment shall remain in abeyance until such time as the matter becomes final under these provisions.

§85-28-6. Hearings; General Provisions.

6.1. All administrative hearings conducted pursuant to this rule will be held in accordance with the provisions of W. Va. Code ~~§29A-5-1~~Section 29A-5-1 *et seq.* and the provisions of this rule.

~~6.2.~~6.2 Representation. Corporations and the ~~division~~Commission may only be represented by an attorney duly licensed to practice law in the state of West Virginia.

~~6.3.~~6.3 Notice of scheduling/status conference or hearing. Unless waived by all~~the~~ parties, all such conferences or hearings shall be preceded by at least ten (10) calendar days written notice.

~~6.4.~~6.4 Counsel for the health care provider shall file a notice of appearance with the hearing officer, the ~~division, and with the designee from the legal services division~~Commission, and with the Commission designee along with the request for a hearing, or as soon thereafter as the attorney assumes representation of the health care provider.

6.5. The ~~hearing~~conference and hearings shall be held in Kanawha County, West Virginia, telephonically, or in the county designated by the ~~division.~~ Commission. The decision to hold the hearing in person or telephonically shall vest in the discretion of the hearing officer. The ~~hearing~~initial scheduling/ status conference shall be held within forty (40) calendar days from the receipt of protest, ~~no longer than sixty (60) calendar days at the request of any party.~~unless continued by agreement of the hearing officer and parties.

§85-28-7. Parties and Conduct of Hearings.

7.1. At the initial scheduling/status conference, the hearing officer shall enter an Order establishing the following:

1. Hearing date;

2. The specific issues to be addressed;

3. The amount of contested overpayment;

4. Discovery cutoff, if discovery is requested by either party and deemed necessary by the hearing officer; and

5. Deadline for disclosure of all witnesses and documents to be offered by either party

7.2. At the time of the hearing, an opportunity shall be afforded to all parties to present relevant evidence. Testimony may be restricted if it appears that it is cumulative in nature, or if it is not relevant to the issues in dispute. Character evidence will not be admissible, as it does not pertain to the relevant issues at hand. Closing arguments shall be restricted to a brief presentation in written form. All of the testimony and evidence at the hearing shall be reported by stenographic notes and characters or by mechanical means. All rulings on the admissibility of testimony and evidence shall also be reported. All reported testimony and evidence at a hearing shall be transcribed, and a copy thereof furnished to the party upon its request.

~~7.2.~~7.3. All hearings shall be conducted in an informal and impartial manner. The hearing officer shall have the power to administer oaths and affirmations, certify official acts, take

depositions, rule upon offers of proof, and receive relevant evidence, regulate the course of the hearing, hold conferences for the settlement or simplification of the issues, dispose of procedural requests, motions or similar matters, and take other such actions as are authorized by this rule.

~~7.3.~~ 7.4. Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence.

~~7.4.~~ 7.5. All witnesses who testify during a hearing shall first be subject to oath or affirmation, and any testimony submitted by deposition shall show on the face thereof that the witness was so qualified. Any transcript shall become part of the official record and relied upon for final decision.

~~7.5.~~ 7.6. The hearing officer may take notice of judicially cognizable facts. All parties shall be notified either before or during the hearing, or by reference on preliminary reports or otherwise, or the material to be noticed, and they shall be afforded an opportunity to contest the facts so noticed.

§85-28-8. Burden of Proof.

There is a presumption that the ~~division's~~Commission's decisions or actions are valid. The party contesting the ~~division's~~Commission's decisions or actions has the burden of overcoming this presumption by satisfactory proof.

§85-28-9. Standard for Medically Unsupported Treatment.

West Virginia Code Section 23-4-3c(a)(5) requires the Commission to establish criteria for determining whether a health care provider has made medically unsupported recommendations regarding a percentage of disability or has prescribed medically unsupported treatment, including medication. The criteria shall include, but not be limited to, the following:

9.1 Recommendations and treatment must be reflective of accepted standards of good practice, within the scope of practice of the provider's license or certification;

9.2 Treatment must be curative or rehabilitative. Care must be of a type to cure the effects of a work-related injury or illness, or it must be rehabilitative. Curative treatment produces permanent changes which eliminate or lessen the clinical effects of an accepted condition. Rehabilitative treatment allows an injured or ill worker to regain functional activity in the presence of an interfering accepted condition. Curative and rehabilitative care produce long-term changes On a case-by-case basis, the Commission may, in its sole discretion, authorize the use of treatment for conditions that are defined as long-term or chronic even though the treatment is not curative or rehabilitative;

9.3 Treatment shall not be proposed or delivered primarily for the convenience of the claimant, the claimant's doctor, or any other provider;

9.4 Treatment shall be provided in the most cost-effective manner and in the least intensive setting consistent with the other criteria set forth herein;

9.5 Treatment shall not present hazards in excess of the expected medical benefits;

9.6 Treatment which is controversial, obsolete, investigational or experimental will be subject to strict scrutiny by the Commission and must be pre-authorized by the Commission; and

9.7 Recommendations regarding a percentage of disability shall reflect a consistent and correct application of the guidelines for the calculation of permanent partial disability as contained in the applicable rules of the Commission.

§85-28-10. Correction of the Record.

Correction of the record shall be made by the hearing officer upon his or her own motion, or upon the written motion of either of the parties to the hearing.

~~§85-28-10.~~ **§85-28-11. Subpoenas.**

~~10.1.~~ 11.1 All subpoenas and subpoenas duces tecum shall be issued in the name of the hearing officer and bear a facsimile of his or her signature, but the party requesting their issuance must sign the actual subpoenas and see that they are properly served. The subpoenas and subpoenas duces tecum must be issued through a party's counsel as a member of the Bar and an officer of the Court. All requests by interested parties for subpoenas and subpoenas duces tecum shall be in writing, and shall contain a statement acknowledging that the requesting party agrees to pay service fees, fees for attendance, and travel for witnesses.

~~10.2.~~ 11.2. Every subpoena or subpoena duces tecum shall be served at least five (5) days before the return date thereof, either by personal service made by any person over eighteen (18) years of age, or by registered or certified mail. If service is by mail, then the five (5) day notice period shall not begin to run until the date the subpoena or subpoena duces tecum is received by the person or entity subject thereto as shown by the date on the return receipt.

~~10.3.~~ 11.3. Any person who serves any such subpoena or subpoena duces tecum shall be entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state. Fees for the attendance and travel of witnesses shall be the same as for witnesses before the circuit courts of this state. All such fees related to any subpoena or subpoena duces tecum issued at the instance of an interested party shall be paid by the party who asks that such subpoena or subpoena duces tecum be issued.

~~10.4.~~ 11.4. In case of failure or refusal of any person to comply with any subpoena or subpoena duces tecum served on any person, or the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county in which the hearing is being held, or the judge thereof in vacation, upon application by the ~~commissioner, or~~

~~any division employee designated by the commissioner,~~Commission, or hearing officer, shall compel obedience by attachment proceedings as for contempt of a subpoena or subpoena duces tecum issued from such circuit court or a refusal to testify therein.

~~10.5.~~11.5. Upon motion made promptly and in any event before the time specified in a subpoena duces tecum for compliance therewith, the circuit court of the county in which the hearing is being held, or the circuit court in which the subpoena dues tecum was served, or the judge if either such court in vacation, may grant any relief with respect to such subpoena duces tecum which either such court, under the West Virginia Rules of Civil Procedure for Trial Courts of Record, could grant, and for any of the same reasons, with respect to a subpoena duces tecum issued from either such court.

~~10.6.~~11.6. The issuance of a subpoena duces tecum will be refused only in an instance where there is good reason to believe that the subpoena power is being abused. All subpoenas and subpoenas duces tecum will state on their face the name of the party who requested it.

11.7 Any party filing a protest, by virtue thereof, has conceded jurisdiction and venue with respect to any and all subpoenas issued by the hearing officer with respect to any employee, officer, or representative of the contesting party and any and all notices of deposition or discovery request served by the Commission and deemed relevant by the hearing officer.

~~§85-28-11.~~§85-28-12. Hearing Officers.

~~11.1.~~ 12.1. Every hearing officer appointed by the ~~commissioner~~Commission to conduct a hearing under this rule shall be an attorney licensed to practice law in this state.

~~11.1.a. The commissioner~~ 12.1.a. The Commission may delegate the authority necessary for the conduct of certain proceedings under this rule to the chief administrative law judge of the office of judges. The chief administrative law judge is authorized to assign attorneys from the office of judges as hearing officers.

~~11.1.b. The commissioner~~ 12.1.b. The Commission retains the right to appoint other attorneys as hearing officers for purposes of conducting specific hearings or types of hearings under this rule.

~~11.2.~~ 12.2. The hearing officers are authorized to receive and rule upon any procedural matter arising before, during and after a hearing.

~~11.3.~~ 12.3. Requests for continuances by a party shall not be granted as a matter of course, but only upon a showing of good cause.

~~§85-28-12.~~§85-28-13. Conclusion of Hearing.

~~12.1.~~ 13.1 At the conclusion of the hearing, the parties shall be permitted to file closing arguments, proposed findings of fact, conclusions of law, and such legal briefs or memoranda as

they wish. The parties shall be permitted ten (10) calendar days to file such items which filings shall be concurrent.

~~12.2.~~ 13.2. The parties shall be permitted five (5) calendar days to respond to the filing of the other party, if desired. No further argument shall be permitted.

~~12.3.~~ 13.3. Thereafter, the hearing officer shall prepare a report and recommendation that shall contain proposed findings of fact and conclusions of law as suggested by the hearing officer for the ~~commissioner's~~Commission's approval.

~~12.4.~~ 13.4. The parties to the hearing shall then be permitted ten (10) days to file objections or comments upon the report and recommendations and five (5) more days to respond to each ~~other's~~other's objections and comments.

~~12.5.~~ 13.5. Thereafter, the ~~commissioner~~Commission shall decide whether to accept the report and recommendation, to reject it, to modify it, or to remand the matter back to the hearing officer for further proceedings or upon other instructions.

~~12.6. The commissioner~~ 13.6. The Commission retains the right to review any and all proposed findings of fact against the record and to disagree therewith provided that the ~~commissioner~~Commission states the basis for the disagreement in the final order.

~~12.7. The commissioner~~ 13.7. The Commission shall render either a final order or an interlocutory order as the decision may require in which the ~~commissioner~~Commission accepts in whole or in part the proposed findings of fact and conclusions of law submitted by the hearing officer and, to the extent that the ~~commissioner~~Commission rejects or modifies the report or recommendation of the hearing officer, the ~~commissioner~~Commission shall furnish his or her own findings of fact and conclusions of law.

~~12.8.~~ 13.8. A copy of the final order or decision of the ~~commissioner~~Commission shall be served upon each party and the ~~parties'~~parties' attorneys of record, if any, either in person or by certified mail.

~~12.9.~~ 13.9. All appeals from the final order or decision of the ~~commissioner~~Commission shall be taken pursuant to W. Va. Code §29A-5-4, in the circuit court of Kanawha County.

~~12.10.~~ 13.10. Upon appeal from the ~~commissioner's~~Commission's final decision, hearing officer shall transmit the entire record to the circuit court of Kanawha County, by either paper copy or any other electronic media that can be accommodated by the court in which relief is sought.

~~§85-28-13.~~§85-28-14. Pending Petitions

All petitions for hearings filed pursuant to recovery letters generated or other administrative actions taken by the ~~division~~Commission or its agent or filed by health care providers pursuant to the provisions of 85 CSR 7, ~~"Rules~~"Rules for Selected ~~Hearings", prior to the effective~~

~~date of this rule,~~Hearings", prior to May 5, 2003, for which no hearing has been held shall be transferred to hearing officers designated by the ~~commissioner~~Commission under this rule.

~~§85-28-14.~~§85-28-15. Notices.

~~14.1.~~15.1. General. Except as hereinafter provided, the name and address given by the health care vendor on the vendor application shall be used by the ~~division~~Commission for giving any notice required by the statute or by this rule, unless a formal request for a change of name or address is made by the health care vendor as hereinafter provided.

~~14.2.~~15.2. Change of name or address. Any health care vendor changing the name or the address of the business must promptly notify the ~~division,~~Commission, in writing, and request that the name or address be changed on the ~~division's~~Commission's records. Every health care vendor required to register with the Office of the Secretary of State shall provide evidence of any name change from that office.

~~14.3.~~15.3. Effect of failure to request change of name or address. In the absence of a written request for a change of name or address by the health care vendor, any notice given by the ~~division~~Commission to the health care vendor at the address and in the name shown on the ~~division's~~Commission's records shall constitute constructive notice to the health care vendor of any action taken.

~~14.4.~~15.4. Legal notice to attorney or agent. In any matter arising under this rule in which the ~~division~~Commission is required to give notice to a party, if a party is represented by an attorney or other representative, then notice to the attorney or other representative shall be sufficient notice to the party so represented.

~~§85-28-15.~~§85-28-16. Severability.

If any provision of this rule or the application thereof to any entity or circumstances shall be held invalid, such invalidity shall not affect the provisions or the applications of this rule which can be given affect without the invalid provisions or application and to this end the provisions of this rule are declared to be severable.

BEFORE THE WEST VIRGINIA WORKERS' COMPENSATION COMMISSION
BOARD OF MANAGERS

IN RE: RULE 85 CSR 28

ORIGINAL

TRANSCRIPT OF PROCEEDINGS had at the public hearing in the above referenced matter, held on December 17, 2003, at 11:00 a.m., before the West Virginia Workers' Compensation Commission Board of Managers, at the Charleston Civic Center, Charleston, West Virginia, pursuant to notice duly given to all interested parties.

REBECCA L. BAKER
CERTIFIED COURT REPORTER
P. O. BOX 7822
CROSS LANES, WV 25356 - (304) 759-2471

ATTENDING REPORTER: JENNIFER L. JIMISON, CCR

A P P E A R A N C E S:

MEMBERS OF THE BOARD OF MANAGERS:

STEVE WHITE, Chairman
CRAIG SLAUGHTER
RICHARD HUMPHREYS
GENE F. BAILEY
JOHN JOHNSON
EVERETTE SULLIVAN
BOB PHALEN
DOUG MERRITT (via telephone)

(Call to order, 11:05 a.m.)

CHAIRMAN WHITE: Pursuant to the provisions of West Virginia Code 23-1-1A(j)30, the Board of Managers is responsible for approving the rules for the Workers' Compensation Commission.

The Board has determined that a public hearing be held with regard to this Rule 28 to solicit public comment.

I've been provided the sign-in sheet for public comment and I have no individuals indicating they wish to comment on Rule 28. Are there any individuals here that wish to comment on Rule 28?

(No response.)

CHAIRMAN WHITE: I hereby declare that the public comment period with respect to Rule 28 is closed.

(Whereupon, the public hearing was adjourned.)

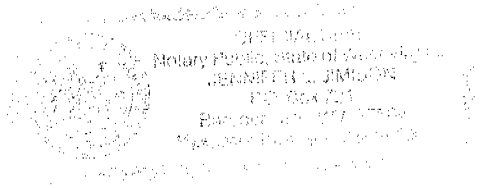
REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, to wit:

I, Jennifer L. Jimison, a Subcontractor for Rebecca L. Baker, Official Court Reporter, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings as set forth in the caption thereof.

Jennifer L. Jimison
Certified Court Reporter



BOARD OF MANAGERS

December 18, 2003 - 10:00 a.m.
Charleston Civic Center Rms. 207-209

AGENDA

1. Call to Order.....Steve White
2. Approval of Minutes.....Steve White
3. Commission Report.....Greg Burton
4. Office of Judges Report .....Timothy Leach
5. Claims Committee Report.....Everette Sullivan
6. Audit Committee Report.....Bob Phalen
7. Finance & Administration Report.....Chris Jarrett
8. Risk Management Report.....Doug Merritt
9. General Counsel's Report.....T.J. Obrokta
   a. Primary Contractor Liability 85CSR10
   b. Board of Managers Procedural Rule 85CSR14
   c. License Non-Renewal and Revocation Rule 85CSR32
   d. Treatment Refusal and Mileage Rule 85CSR1
   e. Health Care Vendor Hearings Rule 85CSR28
   f. Request to File Rules
10. Old Business.....Steve White
11. New Business.....Steve White
12. Comments from the Public.....Steve White
13. Next Meeting.....Steve White
14. Executive Session.....Steve White
15. Adjourn.....Steve White

WORKERS' COMPENSATION COMMISSION BOARD OF MANAGERS

DECEMBER 18, 2003

Minutes of the meeting of the Board of Managers held on Thursday, December 18, 2003, at 10:00 a.m. in the Charleston Civic Center, Rooms 207-209, Charleston, West Virginia.

Board members present:

Steve White, Chairman
Gene F. Bailey
Richard W. Humphreys
Chris E. Jarrett
John L. Johnson
Matt Jones (representing Craig Slaughter)
Brooks McCabe
Douglas W. Merritt
Bob Phalen
David Satterfield (by phone)
Everette E. Sullivan

Commission staff present:

Gregory A. Burton
Melinda Ashworth Kiss
Timothy G. Leach
T. J. Obrokta
Randall B. Suter
Lisa Teel

1. Call To Order

Chairman White called the meeting to order at 10:10 a.m.

2. Approval Of Minutes

Mr. Sullivan moved to approve the minutes of the meeting held on October 28, 2003. The motion was seconded by Mr. Merritt and passed unanimously.

3. Commission Report – Gregory A. Burton

Gregory A. Burton: Thank you, Mr. Chairman. You have in your hand-out the November statement. This was gone over at the last F&A Committee meeting, but we wanted to take a minute to go over it with the full Board. This is a new format. I want to make sure everyone is comfortable with it and you're getting the information that you want to receive.

9. General Counsel's Report – T. J. Obrokta

T. J. Obrokta: Mr. Chairman, members of the Committee, T. J. Obrokta, General Counsel, Workers' Compensation Commission. You have on the agenda before you here today eight rules that we will be discussing that are at various stages in the rule development process. Before I discuss the specific rules, let me just say you've been handed a packet that has the eight rules that we're going to discuss today in the order in which we will discuss them. I'll go through them one-by-one.

If I could make a preliminary comment or two, we're pretty excited about today. This Commission – more importantly, this Board of Managers has been in existence for only two-and-a-half months, and yet today you stand poised to vote on up to five rules that will go a long way to implementing Senate Bill 2013. We think that pace has been expeditious but a deliberate pace, and certainly congratulate the Board of Managers on the process. I will finally say that given the very limited comments we had yesterday at the public hearing, it's very clear that the process we've established, as authorized by Mr. Burton, has given everyone a seat at the table in the development of these rules. I believe everyone who came up and commented yesterday indicated that they had made comments during the process and that we had accepted a lot of them. So, people are given a seat at the table, we take their comments seriously, and have tried to adopt as many as we possibly could. With that, I'll go right to the rules.

The first rule in your packet is Rule 10. This is a rule up for final vote today. Just a very general – very brief background because you've seen most of these rules several times before. Historically, primary contractors have been liable for the unpaid premiums of their sub-contractors. Senate Bill 2013 expanded that concept to include what it called the Natural Resources Extraction Business. That is to say, we're going to take this concept and we're going to apply it in the coal, timber and natural gas businesses. Primary contractors will be liable for the unpaid premiums of their subs.

We took the then existing Rule 10 and modified it to accommodate this legislative change. That is what's before you here today. This rule has been through several drafts with the stakeholders – everyone from the Coal Association to the United Mine Workers, the Chamber, and the AFL-CIO. I think we're very comfortable with the way it is now.

The changes I would like to highlight and make the Board aware of today are the changes that were suggested yesterday at the public hearing. The comments, I believe, came from Mr. Maroney's office. They're four small comments – small in terms of the least number of words – that I will briefly discuss with you.

On page 2 of Rule 10, paragraph 2.3, you will see some underlined language on the fourth line. It says within ninety days. This issue addresses when an out-of-state company comes into West Virginia and when they are required to get coverage from our Workers' Comp Commission and when their coverage from the other State will apply. This ninety days is provided for in Rule 9 of our rules. Rule 9 covers all types of coverage issues, classification issues – it covers really all of the "employer" issues. I believe the suggestion from the comment was to take that ninety days to thirty. The reason I would disagree with that suggestion is because that ninety days is provided for in Rule 9. Rule 9 takes a global approach to this whole issue, and I think we should reserve the right to address this issue when Rule 9 is before the Board, which I would expect to be in the next few months. So, I'm not suggesting that I disagree with the comment. I'm simply suggesting that this is an issue that if we changed it now, it would be inconsistent with Rule 9, and I just think it's an issue better addressed once the Board is looking at Rule 9 in total. So, I would suggest not adopting that recommendation.

Paragraph 3.2 on the bottom of this page – the fourth line. Mr. Maroney wanted to insert the word "transportation" to make it clear that this rule covered those who also transported natural resources. I think the rule covered them anyway, but to accommodate his request, I inserted the word "transportation" there on the fourth line.

Page 3 – you'll see the first full paragraph, 3.2.b. You'll see a reference there to thirty days. The concept of primary contractors only being liable for the unpaid sub's premiums – that only applies per *Code* if the contractor/sub-contractor contract is longer than thirty days. That's in *Code*. That's why we have thirty days here. If you adopted the public comment suggestion that that thirty days go, I believe, to ten days, that would be in violation of the *Code*. So, I'm not suggesting that I disagree with the concept – I may even agree with the concept – but I don't think you can do it here in this rule. I think that would require a legislative change.

Finally, on page 6 of the document, you will see paragraph 5.6. The essence of this paragraph is as follows. Under the *Code*, a primary contractor can protect itself from being liable for the unpaid premiums of its subs if that primary contractor comes to us before the contract and gets a certificate from us saying the sub's in good standing with us. There's a whole process set forth in the *Code* that enables the primary contractor to insulate itself from this liability. Paragraph 5.6 is in here to adopt those provisions of the *Code*. It was suggested that this come out in the public comment period. I would disagree with that suggestion because, again, I think this is just implementing what's in the *Code* and to be changed, it would have to be changed in the *Code*.

Those are the four comments we received yesterday, according to my notes, on Rule 10. I think it's fair to say that, given the scope of the rule and its complexity, we were pleased to be down to these very few issues.

I would respectfully request from this Board that it entertain a motion to adopt the recommendations we propose be adopted from the public comments and have those amended into the rule. Then I would request a second motion to approve the rule – the final filing with the Secretary of State's office.

Chairman White: Thank you, Mr. Obrokta. Do we have a motion to amend the rule as suggested?

Mr. Merritt: I would like to make that motion – as Mr. Obrokta indicated, actually two motions – one to make the amendments/changes and then to ....

Chairman White: The first motion would be to make the amendments that have been suggested by the Division reflecting public comments. We have a motion. Do we have a second?

Mr. Sullivan: Second. I have a question. Mr. Obrokta, on the ninety days to thirty days request, you said that would be in Rule 9?

Mr. Obrokta: Yes, sir.

Mr. Sullivan: What would be the position of the Commission on bringing it back to thirty days if we did change it in Rule 9?

Mr. Obrokta: Without consulting with Mr. Burton or the rest of the Commission, I would say it is my personal belief that conceptually, it makes sense to reduce the ninety days. My personal belief is it would make sense to sit down and try to lower that figure.

Mr. Sullivan: Back to thirty days or ten days or...?

Mr. Obrokta: I would want to give it further thought before I would commit to a number but, again, conceptually, I agree with the idea.

Mr. Phalen: I just want to follow up on that. I appreciate your response, T.J., however, once we got to Rule 9, we have Rule 10 and Rule 10 has ninety days. Then if we were to change Rule 9 to thirty days, would there not be a conflict there?

Mr. Obrokta: At that point, we could certainly just do an amendment to this section. We could amend that one word. We could come back and do that very easily.

Mr. Phalen: Okay. Thank you.

Chairman White: Good question. Any further discussion? Hearing none, all those in favor, please signify by saying "Aye." Opposed?

The motion was passed unanimously.

Chairman White: It is clear that the amendment has passed. The rule before you is the revised Primary Contractor Liability Rule 10. Do I hear a motion?

Mr. Merritt: So moved.

Mr. Sullivan: Second. Mr. Obrokta, you said that even though we pass this rule that we can come back and amend it if we amend Rule 9?

Mr. Obrokta: Yes, sir. We can put language in Rule 9 that says this supercedes the ninety days in this rule. We can easily address that.

Mr. Sullivan: Thank you.

Chairman White: Further discussion? Hearing none, all those in favor of passing the revised rule, signify by saying "Aye." Opposed?

The motion was passed unanimously.

Chairman White: It is clear that revised Rule 10, the Primary Contractor Liability Rule, has passed. The next rule on the agenda is Rule 14. Mr. Obrokta.

Mr. Obrokta: Rule 14 is the procedural rule that sets forth how this Board of Managers will operate. This rule was subject to public hearing yesterday. There was one comment received on the rule that I have tried to accommodate. I believe the comment was either from Mr. White or Mr. Maroney's office.

If you will look on page 7 of the document, you will see the second full paragraph, number 10.8. There was an interest expressed yesterday during the public hearing discussion that members of the public be able to come to this Board and request a public hearing on a rule.

After discussions with some of the Board members afterwards, I have tried to come up with language that accommodates that request. Essentially, what it reads is, any member of the public may request a public hearing – may request one – at any point until after the rule has been filed with the Secretary of State's office and then fifteen days have expired. After the expiration of those fifteen days – it's been out there in the public for fifteen days – then that right to request a public hearing would expire.

But, again, during the entire drafting process, during the entire deliberation process when you're considering filing with the Secretary of State's office, and after we file with the Secretary of State's office for the next fifteen days, all that time is open for members of the public to come to you or come to us as a Commission if you're not having a meeting, and request a public hearing. I think that's a reasonable balance. We don't want to unnecessarily delay the process but, again, we want to accommodate the request. That was the only comment made at yesterday's public hearing.

The Commission would request two similar motions that were made for Rule 10.

Mr. Sullivan: Mr. Chairman, I move the amendments be approved.

Mr. Phalen: Second

Chairman White: Discussion? All those in favor, signify by saying "Aye." Opposed?

The motion passed unanimously.

Chairman White: It is clear the amendment has passed. The rule has been amended to reflect the comments made in the public comment period. Do we have a motion to adopt the amended rule?

Mr. Jarrett: So moved.

Mr. Bailey: Second.

Chairman White: We have a motion and a second. Discussion? All those in favor, please signify by saying "Aye." Opposed?

The motion passed unanimously.

Chairman White: We have declared that revised Rule 14 as before this Committee has passed. The next item on the agenda is Rule 32.

Mr. Obrokta: Mr. Chairman, members of the Board, Rule 32 is a critical rule that we see as a great new tool given to us by the Legislature to enforce premium collections. Specifically, it has been the law on the books for quite a while that if an employer goes into default, the next time that employer goes to get a new business license or any other license that's necessary to do business – the next time they go to renew that, that request will be rejected because they're in default with Workers' Comp.

The Legislature greatly strengthened that provision. What the Legislature said in Senate Bill 2013 is, you no longer have to wait until it's renewal time. You can go out now and when they go into default, you can go out and you can revoke a business license or any other type of license that's necessary to do business in the State of West Virginia – a very proactive step. We took Rule 32 and modified it to reflect this legislative change.

Again, this rule's been all through the drafting stages with the stakeholders. It's been through the Sub-Committees. It was the subject of yesterday's public hearing. I believe we received two comments yesterday and I'm trying to adopt them both.

If you will turn to page 2 of the document, you will see paragraph 2.9. If I could just take a step back and explain what this is trying to get at, it may be helpful. Rule 32 says you can go out and revoke business licenses or what-have-you if they go into default. There's a separate concept in the legislation – another new concept – called an Employer Violator System. What that says is, if you're a ten percent or more shareholder in a company that goes into default, you're going to be put on a violator list and, you, as an individual, if you go try to form another company – go around the hill and start another operation – you will be denied. You will be blocked. That Employer Violator System deals with the individual owners of the companies.

The trick is to make sure Rule 32, which, again, involves the revoking of business licenses, must work in tandem with the Employer Violator System so that when you revoke the license, then you get the ownership information on the folks who own that company who are in default, and you put those individuals on the Employer Violator System. So, the next time they go out and try to start a new company, they won't be allowed to do so. So, these two concepts have to work in tandem. We fully agree with that concept.

Steve White with the ACT Foundation wanted to make it clearer in Rule 32 that it has to work with the Employer Violator System. I agree with that. The language I've come up with is in 2.9, the last sentence has been added. It reads as follows: The Commission shall gather individual and other ownership information concerning the employing units in default for examination under the Commission's Employer Violator System.

That's the language I've tried to come up with to make the point that these two endeavors must work in tandem together. I spoke with Mr. White before the meeting – I don't want to put words in his mouth, but I think he thinks we're almost there. I'm not sure he's completely signed on, but that's the best I think we can do to try to accommodate the request.

The other request yesterday at the public hearing made, I believe, by Mr. Maroney's office – if you turn to page 4 of the document, what this paragraph is addressing – paragraph 7.2. Let me take a step back and kind of give you the factual scenario of how this would evolve. An employer goes delinquent – they don't pay their premiums. Then they go into default because they still haven't paid their premiums. Several months have gone by now. So, then they go into default. At that point, we're going to revoke the business license. The rule provides for an administrative review before we pull the license because governments do make mistakes and we don't want to pull someone's business license until we're sure. Mr. Maroney suggested that you need to make them put up a bond at that point before you reconsider to at least secure the debt. We agreed with that and put that in. But I said the Commission "may" require the bond, etc., and he thought "may" should be "shall." So I made it "shall." 7.2. Okay.

That covers the comments that I have from my notes on the hearing yesterday. So, with that, I would ask that the Board adopt the various modifications to Rule 32 that have evolved through the public hearing process. Then, I would ask for a second motion approving Rule 32 for final filing.

Mr. Sullivan: So moved, Mr. Chairman.

Mr. Satterfield: Second.

Chairman White: We have before us a motion to adopt the amendments that have been explained by Mr. Obrokta to Rule 32. Discussion?

John L. Johnson: Yes, I have a question, T. J. In regard to 7.2, changing the "may" to "shall" gives the Division absolutely no leeway going forward. If an employer happens to be in default, it's quite possible that they're defaulting for good reasons – economic reasons – and, consequently, cannot afford at that time to put up assets for reconsideration which means that then you have no choice but to go out of business which may not work in the best interest of Workers' Comp and may not work in the best interest of the State as a whole. So, for that reason, I object to changing that from "may" to "shall."

As a matter of fact, I'm pretty sure if we change that – in the past, we would have been in hot water with a lot of different companies and entities that we are even currently dealing with. So, I would oppose changing that to "shall."

Mr. Obrokta: Mr. Johnson, I share some of your apprehension on this change, but the way I reconciled it in my own mind is that we are so far down the process at this point – they've been in delinquency, they've been in default and they still haven't paid. So, I'm very sensitive to your issue and I think you raise a very good point, but they're so far down the line at this point, I could see the point that we want to be firm with them, and I would ultimately suggest that this Board do that.

The other point I would suggest is, all they have to do – of course, well, they can pay up – they can also just enter into a repayment agreement. That's sufficient, or they can get a cash or surety bond or a bank letter of credit. So, they have several methods available to them that will hopefully safeguard against the issue you're raising.

Chairman White: Any further discussion?

Mr. Phalen: T. J., in regard to the employing unit under 2.9 – and I appreciate you adding the additional language – one question that I have. It says, the Commission shall gather individual or other ownership information – does this go towards if, say we have three owners with an employer or a board of directors. Let's just put it that way. Does this prohibit (a) the CEO or the president of the company or the employer from obtaining another license or whatever? Would his license be revoked or (b) a secretary/treasurer of an employer or that he or she may be able, to use your words, go around the hill and open up another operation? Does that go to that extent?

Mr. Obrokta: It does not go to that extent. But, when we do the Employer Violator System and they work together, we will accomplish the concepts you're describing. But, again, Rule 32 is not designed to do that. It's just a rule limited to the revoking of business licenses. But, again, to put this language in there, I'm trying to make the point that it's got to talk with the Employer Violator System and, working together, they should accomplish what you've outlined.

Mr. Phalen: Okay. Just to make sure I understand it, in conjunction with the Employer Violator System, this change that you've made should take care of that particular problem.

Mr. Obrokta: That's correct.

Chairman White: Any further discussion? The question before us is the adoption of the amendment to Rule 32 which reflects the comments made in the public comment period. We have a motion and a second. All those in favor, please signify by saying "Aye."

Ayes: Humphreys, Jarrett, McCabe, Phalen, Satterfield, Sullivan, White

Chairman White: Opposed?

Nays: Bailey, Johnson, Merritt

Chairman White: The "Ayes" have it. The motion is passed.

We have an amended Rule 32 before us. Do I have a motion for the adoption of amended Rule 32?

Mr. Phalen: So moved, Mr. Chairman.

Mr. Satterfield: Second.

Chairman White: We have a motion and a second to adopt revised Rule 32. Discussion? Hearing no discussion, we have before us the revised Rule 32. All those in favor, please signify by saying "Aye."

Ayes: Humphreys, Jarrett, McCabe, Phalen, Satterfield, Sullivan, White

Chairman White: Opposed?

Nays: Bailey, Johnson, Merritt

Chairman White: The "Ayes" have it. I declare the motion is passed. The revised rule has been adopted.

Mr. Obrokta: The next rule is Rule 28. Senate Bill 2013 did several things in an effort to get a hold of and to get under control the various medical expenses being incurred by the Commission. A couple things Senate Bill 2013 did – first of all, it gave the Executive Director power to suspend for up to three years or terminate any medical provider who's abusing the system. The old law used to require, however, that the Executive Director go through a very onerous administrative process before he could get to that point.

The second thing Senate Bill 2013 did was say, he doesn't have to go through that onerous administrative process any more. He can immediately suspend or terminate a medical provider after he's consulted with a medical expert of his own. He can immediately suspend or terminate, and then there will be an administrative process to see whether he was right or not, essentially.

Those rules have been modified and put into Rule 28. The only public comment – there were no comments yesterday on this rule. This rule, again, has gone through the stakeholder process. The only comment I received – and it's well taken. If you'll turn to page 8 of the document – the statute states that the Executive Director can suspend or terminate if the provider is basically engaging in medically-unsupportable treatment. Paragraph 9.6 is a series of definitions of what that means. What we wrote was, "treatment which is controversial, obsolete, investigational or experimental will be subject to strict scrutiny by the Commission." It was suggested that we add the words, "and must be pre-authorized by the Commission." I think it's a good point, although I do think it's taken care of in other rules. But, again, I would propose amending Rule 28 by adding that phrase – "and must be pre-authorized by the Commission." That's the only public comment and change that I'm aware of.

So, I would request a vote to adopt that minor change, and I would request a vote to file the rule with the Secretary of State's office.

Mr. Bailey: I move that we adopt the change.

Mr. Humphreys: Second.

Chairman White: I have a motion that we adopt the amendment and a second. Discussion?

Mr. Humphreys: T. J., at 9.6, it may not be of any consequence, but I guess I'm a little uneasy about the idea that the Commission might pre-authorize controversial or obsolete treatment.

Mr. Obrokta: I would be concerned if we pre-authorized obsolete treatment as well and, if we do that, I hope someone brings it to your attention. I agree that language might not quite – I'm sensitive to your point. I would simply – I guess I would suggest that our Medical Director, Jim Becker, and his staff will be the ones responsible for ensuring that we don't run afoul of the concern you're expressing. I have full faith that they will do that.

As soon as we take out obsolete, which we can do if you'd like, there's going to be a treating physician who's going to say this is not obsolete, so there's going to be a debate as to what's obsolete. That's why we're saying it's subject to strict scrutiny and that we pre-authorize before we ever do it.

Chairman White: Any further discussion? The question before us is passage of the Rule 28, as amended, pursuant to the recommendations of the Division. All of those in favor, please signify by saying "Aye." Opposed?

The motion passed unanimously.

Chairman White: I declare the motion has passed. The rule has been adopted. It has been pointed out to me that the amendment has not been passed. We'll do it again. All those in favor, please signify by saying "Aye." Opposed?

The motion on the amendment to the rule passed unanimously.

Chairman White: We have before us the revised rule. Do I have a motion for its passage?

Mr. Humphreys: I so move.

Mr. Bailey: Second.

Chairman White: We have a motion and a second. Discussion? Hearing none, all those in favor, please signify by saying "Aye." Opposed?

The motion passed unanimously.

Chairman White: I declare the motion has passed. The revised rule has passed – for the second time.

Mr. Obrokta: The next rule on the agenda is the final rule we'll discuss today that you've already seen. This is Rule 1. It's twenty-nine pages long, but we only made a few isolated changes to it.

They are as follows. First and foremost, Senate Bill 2013 states that a claimant can have his benefits suspended if he refuses to seek necessary medical treatment. We put the language into the rule which adopts that. I have not received – I don't recall receiving

a single comment from anybody as to the language we put in here. I'm not aware of anyone who objects to how we've set it out. No comments were made on this Rule yesterday at the public hearing.

The second substantive change in Rule 1 is on page 15 of your document. Just to go back over an issue, this is an idea that we presented to the Board awhile back and let me just briefly remind you. Claimants are entitled to mileage reimbursement at 36¢ a mile every time they go to a doctor, chiropractor, etc. We made a proposal, as outlined in the document before you, to eliminate that mileage reimbursement. We would still maintain reimbursing claimants if they were mandated by the Commission to go to a doctor or mandated by an employer to go to the doctor. So, we would still have reimbursement under those circumstances. But the routine daily trips to secure treatment, we were proposing eliminating the mileage reimbursement. We viewed as somewhere north of a $6 million savings and there are three FTEs (full-time employees) that do this work. That was the reason behind the suggestion at the time.

I believe there have been some discussions on maybe a better way to address this issue. Those are my comments and I would leave it to the Board to instruct me on – if there are any questions or if anyone has a suggested better way to do this.

Mr. Phalen: As I spoke before, I was adamantly opposed to the reduction of the 36¢ per mile when an injured worker had to seek medical attention, understanding full well if the employer or the Commission gives that injured worker direction, then that 36¢ per mile would still be paid. That's my understanding, right, T. J.?

Mr. Obrokta: That's correct. As proposed.

Mr. Phalen: And the elimination of the mileage is if the injured worker has a doctor's appointment to be treated for the injury that he has sustained and he goes on his own where the doctor sets up that appointment. That's correct, right?

Mr. Obrokta: Yes, sir.

Mr. Phalen: And, again, I stand today still in opposition of the elimination of that 36¢ per mile, understanding full well that has been the practice of the Division for a number of years and understanding full well as to what the Division has said in regard to the estimated savings that may be derived from the elimination of that 36¢ per mile. Again, that is estimated savings. I have not seen anything concrete as to what that savings would constitute, other than what you folks have told us in the past, and that's somewhere around $5 million, I believe.

Again, I'm still adamantly opposed to the reduction or the elimination of the 36¢ per mile. These people did not ask to be injured. They do not ask the doctor to set up their appointment, in most situations.

Don't anybody misunderstand. I recognize that there's abuse in anything, and some people can take full advantage of anything. But, I can point out several situations where the people do have to go to the doctors on a regular basis and they're not sent by the employer or they're not sent by the Division.

You know, again, these folks did not injure themselves intentionally or whatever the case may be. When they are injured, naturally their monies are eliminated as to their wages and things as to what they're actually used to making. It's reduced. Thank God we do have workers' compensation to provide for on-the-job injuries. However, that's part of the injury, and I can't for the life of me understand, you know, if someone's injured and they have to go to the attending physician for medical treatment as to why they're going to be penalized further out of their pocket to pay for their mileage expense, their gas expense, and things when they've already sustained loss in regard to the injury itself.

So, again, I would still stand opposed to the reduction of the 36¢ per mile on the injured worker. However, I do have an open mind in regard as to how this is done on another level. Through Medicare, I believe it is, that rate is around 13¢ or 15¢ per mile, and I would have an open mind in regard to trying to reach some type of settlement in regard to this particular situation. And even at 15¢ per mile, that's still a 21¢ per mile reduction on an injured worker. However, it's still 15¢ better than zero. So, again, I'm opposed to the elimination of mileage on injured workers.

Mr. Jarrett: There has been, as I understand it, some in-depth discussion between the Commission as well as all the stakeholders regarding this issue. It's been a very divisive issue. In an effort for conciliation and a compromise, I'd like to propose the following as an amendment for this section, 15.1. We would strike it in its entirety and insert the following:

> Claimants are entitled to reasonable travel, meals and lodging expenses actually incurred in connection with medical examinations or treatment. In making a determination of the reasonableness of such expenses, the Commission shall utilize the travel regulations for State employees as a guide, unless specific provisions to the contrary are otherwise contained herein. Claimants may be reimbursed for mileage in connection with medical examination or treatment at a rate of 15¢ per mile.

> This rate shall not apply to mileage reimbursement requests involving treatment provided when the Commission requires the claimant to undergo the medical examination and has selected the physician, or when an employer is required to reimburse reasonable travel and other expenses, as provided for in the *West Virginia Code* §23-4-a. The rate provided for in the travel regulations for State employees shall apply to these latter reimbursement requests.

I offer this as an amendment up for consideration before this Board.

Mr. Sullivan: I would second that amendment, Mr. Chairman.

Chairman White: We have an amendment that's been proposed to Rule 1 and we have a second. Do we have discussion?

Mr. Phalen: Yes, Mr. Chairman. For clarification, Chris, it only applies – the 15¢ only applies to the claimant going to a doctor other than him being directed by the Commission or by the employer, is that correct?

Mr. Jarrett: That's correct.

Mr. Phalen: And the regular amount that's provided by the State *Code*, if the Commission or the employer directs a claimant to a doctor, would still apply in that situation?

Mr. Jarrett: That kick in. That's correct.

Chairman White: Thank you, Mr. Jarrett and Mr. Phalen. Further discussion?

Mr. Bailey: I have a concern or a thought that that 15¢ should be across-the-board. It should be in all the categories whether the employer requests the exam or whether it's an IME. I know that's not what the motion says here at this point in time. I'm even concerned that paying at all – well, I'm not concerned with us paying 15¢ or whatever. I have supported that to some degree. But, I understand that Mr. Obrokta has said here that it takes three full-time employees just to process those invoices. I don't know what we can do about that. I don't know how many invoices that entails – many thousands, I assume, if it takes three full-time employees two hundred and twenty days a year or however many days they work to process those. I, at this point in time, have a problem with the motion if it does not cover all of those categories or all areas.

Chairman White: Mr. Obrokta, in the public hearing process, were there any comments directed to including these other categories into the reduction in the mileage reimbursement?

Mr. Obrokta: Mr. Chairman, normally, we receive very little, if any, written comment on this issue. I got one letter from one attorney suggesting it was unfair. But, I do believe that through the give-and-take of the public discourse, there has been discussion that the concept offered by Mr. Bailey was one alternative people were discussing, as was, of course, the amendment described by Mr. Jarrett. Both have been ideas I have heard floated by one side or the other.

Mr. Jarrett: It's subject to check, but I think, as an employer, if I send my employee to use his personal transportation to go to a doctor at my request, I think I'm required by Federal law to subject him to the Federal levels of transportation. Someone can check that for me. I mean, if I have an employee and I tell him to use his car to go over and pick up a box of paper clips, I've got to pay him mileage, by Federal law. So, I don't know that we can even do that, Gene. That's subject to check.

Mr. Bailey: I mean all I'm asking is that you pay everybody 15¢ a mile. But, you're saying that according to Federal ...

Mr. Jarrett: I would ask for clarification on that if anybody knows that particular piece of the law but, to my knowledge, we pay whatever the guidelines are. An employer is told, here's what you've got to pay if an employee uses his personal car on company business. And, if I direct an employee to go for a second opinion or to a doctor, I typically reimburse him at that 36¢ – unless someone tells me different. That's my understanding.

So, you couldn't change that piece of it. The only piece you could be talking about, in my judgment, would be the part – maybe – and I don't know the law on that one either – when the Commission directs someone to go.

Mr. Humphreys: T. J., awhile back, you gave us an example of a claimant employed by a chiropractor who was charging mileage to go to work. Would this amendment mean that this claimant would be able to charge 15¢ instead of 36¢?

Mr. Obrokta: Yes. Obviously, we're not going to let that person charge anything because they're abusing the system and we'll take the appropriate steps. But, conceptionally, yes.

Mr. Merritt: I personally oppose paying claimants going for the routine doctor visits. I think if you look around at the other surrounding States, they do not pay claimants going for routine office visits. I could live with a change of maybe for these routine visits if there's a mileage of, say, anything over twenty-five miles, then we could consider reimbursing the claimant. That's my suggestion.

Mr. Sullivan: I think we're losing sight of the fact that these are injured workers that we're talking about. These are employees of the employer and it wasn't – as Mr. Phalen has stated, it wasn't their doing that they got injured and they have to go to the doctor, and I don't see why that we'd want to penalize them further. I would support the amendment as it was suggested by Mr. Jarrett.

Mr. McCabe: I would just suggest that perhaps the Board does support the amendment as presented, given the different perspectives that are really fairly broad as I am listening to this. I would suggest that we take this amendment and the Board accept it and pass it and ask that Mr. Obrokta perhaps, at some point in the future, take another look at this. But at least we are taking a step today that we can implement something and create some savings. My fear is that if we don't do that, we may create some unnecessary divisiveness. I sense that there perhaps is not a clear, broad-based consensus on this as we sit here. Maybe what we do is do the best we can today, pass the amendment as presented by Mr. Jarrett and, as we work through some of these other rules, ask Mr. Obrokta to maybe convene a working group to take another look at it further down the path a bit.

Chairman White: Thank you, Mr. McCabe. Are there further discussions? Hearing none, all those in favor of passing the amendment as proposed, signify by saying "Aye."

Ayes: Humphreys, Jarrett, McCabe, Phalen, Satterfield, Sullivan, White

Chairman White: Opposed?

Nays: Bailey, Johnson, Merritt

Chairman White: It is clear that the motion has passed. The rule before the Committee, as revised by Mr. Jarrett's motion.... Now, as a point of clarification, T. J., were there other amendments that had to be addressed or that you have suggested?

Mr. Obrokta: No, sir.

Chairman White: Is there a motion to adopt the Rule that has been amended, pursuant to the amendment just passed? Do we have a motion?

Mr. Jarrett: So moved.

Mr. Sullivan: Second.

Chairman White: We have a motion and a second to adopt the revised Rule 1. Discussion? Hearing none, all those in favor, please signify by saying "Aye."

Ayes: Humphreys, Jarrett, McCabe, Phalen, Satterfield, Sullivan, White

Chairman White: Opposed?

Nays: Bailey, Johnson, Merritt

Chairman White: I declare the motion has passed. Rule 1, as revised, has been adopted by this Committee.

The next item on the agenda is Old Business.

Mr. Obrokta: There should be another item on the agenda regarding rules.

Chairman White: Oh, pardon me. Request to file rules. It's your floor.

Mr. Obrokta: We are now bringing before you three new rules. I am going to request that at least two of those be filed with the Secretary of State's office for the initial public comment period. The same work has gone into these rules that went into the other rules. These rules have gone through the stakeholder process. We've tried to adopt as many suggestions as possible. I am not here to tell you that these rules are perfect yet, but I do think they are far enough along that we can file them. I do think each of these three rules will be very important, and my suggestion would be that each have their own public hearing because they are very substantive rules. I agree that the continued dialogue with all the stakeholders is still necessary on these rules, but I think we're far enough along that they can be filed with the Secretary of State's office.

The first rule in your packet should be Rule 15. This is the Vocational and Rehabilitation Provider Rule. Senate Bill 2013 did a few things on rehab. First of all, it increased from $10,000 to $20,000 – double – the amount we'll pay for rehab plans.

This rule adopts that doubling. Senate Bill 2013 allowed employers to contract with preferred providers for those rehab services. This rule accomplishes that. Finally, Senate Bill 2013 put a two-year limit on rehab indemnity benefits. This rule adopts that as well.

The evolution of this rule is as follows. I did a first draft, as usual, sent it out to everybody and got a whole host of comments. It was important to me and I tried to accommodate as many comments as possible and, then, unlike the other rules, I sent it back out for a second round of comments. I then met with the head of the Rehab Association. I will represent to the Board that I think – not all – but the overwhelming majority of issues have now been worked out with them. I would pledge also to continue to work with them if there are any outstanding issues.

A couple of other changes in the rule or a couple of things the rule accomplishes – there was a $10,000, now a $20,000 cap on rehab plans. The rule never said, well, what goes against that $20,000? It was very hard to police. So I went to the State of Washington, I believe, and they have a rule on rehab. I got a lot of ideas from them. So, the rule sets forth actually what should be charged against the $20,000 so that limit can have some meaning. That's in the rule.

This is a major rewrite – there's no doubt about it – on Rule 15. But, again, we have involved the stakeholders and two drafts have gone out to them and a sit-down meeting. I'm not here to tell you that they agree with everything, but I am here to say that we have narrowed the gap so that I think the filing with the Secretary of State's office, and then a public hearing on this rule, is an appropriate step at this time.

So, with that, I would request permission to file this with the Secretary of State's Office.

Mr. Jarrett: So moved.

Mr. Phalen: Second.

Chairman White: We have a motion and a second. Discussion? All those in favor, please signify by saying "Aye." Opposed?

The motion passed unanimously.

Chairman White: The motion has passed. It will be filed with the Secretary of State's office.

Mr. Obrokta: We will also work with the Chair and the other members of the Board to set up a public hearing on this rule.

Chairman White: A public hearing is hereby requested on this rule.

Mr. Phalen: For clarification. T. J., I thought you stated in the beginning that you would suggest a public hearing on all three?

Mr. Obrokta: That's correct.

The second rule before you, I e-mailed this to everyone on the Board or mailed it to them a couple of weeks ago. Excuse me. Permit me one second.

Chairman White: Just for clarification, Mr. Obrokta, it's my understanding that we will be – when we set the rules for public hearing, that will – if, in fact, a public hearing is beyond the thirty-day time period, the public comment period will be expanded to include the public hearing.

Mr. Obrokta: As a matter of fact, we'll set a forty-five day public comment period just to accommodate that issue. If you need to, we can extend it.

Senate Bill 2013 required us to come up what I generically will call a Medical Management of Claims Rule. This is a very comprehensive rule. If I could just read to you out of Senate Bill 2013 – just very briefly. We have to bring to you what the statute calls a Medical Management of Claims Rule and Awards of Disabilities Rule. This requires three things. Three things must be in this rule. First, we have to establish standardized guidelines and parameters for the appropriate medical treatment of claimants. Second, we have to establish expected periods of time to reach maximum medical improvement. Third, under the statute, we have to come up with ranges of permanent partial disability awards for common injuries and diseases. The statute gives us the flexibility to come up with our own to meet any of these three, or we can reference in our rule a nationally-standardized set of guidelines or what-have-you. So, that's the statutory background for why I'm bringing this rule to you today.

What we've done is, you have a 102 page rule in front of you. The first three pages, which are not included in the 102, are basically a table of contents which breaks down what this rule is trying to do. You'll see roman numeral I, then there's an introduction – those are introductory provisions. Roman numeral II addresses providers – who can be providers of workers' comp. Roman numeral III gets into provision of services – the role

of the treating physician – how do they bill us, things of this nature. Roman numeral IV are those specific guidelines I just mentioned to you regarding treatment – treatment guidelines. Roman numeral V – we have some special rules for drugs and medications. Roman numeral VI gets into the expected period of time off. When you are injured, what do we expect? How long do we expect you to be off? The Board members may know awhile back, the Commission adopted the Pressley-Reed guidelines on this issue and this provision of this rule references Pressley-Reed. That's how we handled that. Roman numeral VII gives the ranges for permanent partial disability awards for common injuries and diseases.

The evolution of this rule is as follows. There was – some of this had been in rules, but very little of it. The Commission had treatment guidelines on the Internet. We had other documents that governed medical care scattered through different rules. It was not well organized. What we did – we took this chance that the Legislature gave us to bring everything in that we could think of that has to do with how we manage medical claims – we spend $220-some million a year on medical claims – and brought everything into one rule – let's sit down and work it out and see how this should all operate.

Jim Becker, our Director of the Office of Medical Services – who's from Marshall, I will mention – he's worked with the WVU lawyers so we have diversity there – worked closely with them. They've had a lot of input. This rule, obviously, the State Medical, the State Hospital – all of those folks who are on our stakeholders list, they got the first draft that you received a couple weeks ago. We've gotten very limited comments on the rule. I think people are still trying to digest it. I do think, however, we are at a point, and we are required by Senate Bill 2013, to get this filed with the Secretary of State's office.

I recognize this is a very voluminous document – that no one can sit down and go through all this at one sitting. This is really the reason I preface my remarks on these rules. I think we need at least a forty-five day public comment period on this. We need a hearing. We need continued involvement with the stakeholders.

I'm not here to tell you this is all agreed to. There will be parts in here that are controversial, I'm sure. But, nevertheless, we are trying to satisfy our legislative mandate to bring this rule to you, and it does need to be filed with the Secretary of State's office before December 31st. So, I present it to you, as a second step in a process I recognize will be a longer process.

I'll be happy to answer any specific questions. Dr. Becker is here to talk about it as well.

But I would respectfully request that we be given permission to file this with the Secretary of State's office and initiate the public comment period and, again, get the stakeholders involved in a public hearing and also as many sit-arounds as we need to, and hammer out any differences. So, with that, I'll request that we file this with the Secretary of State's office.

Chairman White: Thank you, Mr. Obrokta. We have a request to file the rule with the Secretary of State's office. Do I have a motion to that effect?

Mr. Bailey: So moved.

Mr. Jarrett: Second.

Chairman White: All those in favor, please signify by saying "Aye." Opposed?

The motion was passed unanimously.

Chairman White: The rule will be filed with the Secretary of State's office.

Mr. Obrokta: The last rule here before you today -- under Senate Bill 2013, we are required to come up with .... Let me back up. This rule deals with permanent total disability awards. Under Senate Bill 2013, we have to come up -- by the end of this year -- we being the Commission -- have to present to you, the Board, by the end of this year the contents of a new permanent total disability application. We also have to come up with a plan -- under the *Code*, we're required to go back and anyone who was awarded a permanent total disability since 1993, we are required to take another look at those recipients and see if they do still meet the definition of permanently and totally disabled.

The last document in your folder is our attempt to do this. It is our plan to again address a new application and a plan to evaluate all claimants who have received PTDs since 1993. As we put this together, we realized there may be some ancillary issues -- we realized this over the last few days -- there may be some ancillary issues that could be impacted by the requirements of Senate Bill 2013 -- issues such as chargeability and things of this nature.

I would request that you accept this rule as our plan, but I would also request that we hold off until the January meeting before filing with the Secretary of State's office so we can have just one more month to think through these ancillary issues that may be impacted by this that may or may not have been contemplated by the legislation. Again, the plan

certainly meets everything that's required by the legislation, but I think we need to do it right and make sure we address these by-products or these other ancillary issues. So, I would request that you accept this as our plan, but allow us to possibly present an amended plan at the January meeting.

Chairman White: Then you are not asking us to file the rule at this time?

Mr. Obrokta: Not at this point. I would wait to request that in January.

Chairman White: Then, there is no action requested of the Committee?

Mr. Obrokta: I am simply asking you – we are mandated by *Code* to give you this – just to give it to you – by the end of the year. We're doing that. We're clearly satisfying that duty. But, I'm not going to ask you to file it with the Secretary of State's office until the January meeting because there are some other issues that have come up in our deliberative process.

Chairman White: So, you're not asking us to take any action at this time?

Mr. Obrokta: No, sir. Just read it and comment, if you would.

Mr. Phalen: A point of clarification. Are you asking us to accept this plan or just accept that you have given it to us prior to the end of the year?

Mr. Obrokta: Exactly that – the latter. With that, Mr. Chairman, that's all I have.

Chairman White: Thank you very much.

10. Old Business

Chairman White: Do we have old business?

11. New Business

Chairman White: New business?