

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

Do Not Mark In This Box

FILED

2005 JUN -3 P 3:15

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Department of Health and Human Resources TITLE NUMBER: 69

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Implementation of Omnibus Health Care Act

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 341


SECTION 64-5-2, PASSED ON April 8, 2005

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: June 3, 2005


Authorized Signature

Approval of Filing

I, Martha Yeager Walker, Secretary of the Department of Health and Human Resources, do approve and consent to the filing of the attached "Notice of Final Filing and Adoption of Legislative Rule Authorized By The West Virginia Legislature," being an amendment to existing Legislative Rule 69CSR2, Implementation of Omnibus Health Care Act, this 3rd day of June, 2005.

Signed: 
Martha Yeager Walker
Secretary, Department of
Health and Human Resources

Promulgation History

69CSR2

July 23, 2004 – Proposed Rule Filed

August 23, 2004 – Comment Period Ended (No Comments Received)

August 27, 2004 – Agency Approval of Proposed Rule and Filing with Legislative Rule-Making Review Committee

December 15, 2004 – Notice of Rule Modification of a Proposed Rule

April 8, 2005 – Legislature Authorized Promulgation of Rule with Modifications in S.B. 341

April 10, 2005 – S.B. 341 Approved by Governor

June 3, 2005 – Final Filing and Adoption of Legislative Rule Authorized by the West Virginia Legislature

**Effective Date
69CSR2**

Effective date is June 3, 2005.

**TITLE 69
LEGISLATIVE RULE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 2
IMPLEMENTATION OF OMNIBUS HEALTH CARE ACT**

§69-2-1. General.

1.1. Scope. -- This legislative rule implements the provisions of the Omnibus Health Care Act, West Virginia Code, §16-29D-1 et seq., 1989. Under the Act, the Secretary of the Department of Health and Human Resources is charged with the responsibility of promulgating rules to carry out the provisions of the Act. The agencies subordinate to the Secretary under the provisions of the Act and to whom this rule is applicable are the Division of Human Services, the Division of Human Services, the Division of Employment Security, and the Workers' Compensation Commissioner. In addition, section 3 of the Act specifies that certain entities not within the Department of Health and Human Resources are also subject to the provisions of the Act and of this rule. Those other entities are the Public Employees Insurance Agency within the Department of Administration, the Division of Rehabilitation Services under the State Board of Education sitting as the State Board of Rehabilitation, and the University of West Virginia Board of Trustees, and the state's medical schools, within the Department of Education and the Arts. All of these governmental entities either are involved in provision of health care services to beneficiaries of their programs or pay for health care services delivered to those beneficiaries, or both, as well as often providing many other services to the beneficiaries of those governmental entities' programs.

1.2. Authority. -- W.Va. Code §16-29D-7

1.3. Filing Date. -- June 3, 2005

1.4. Effective Date. -- June 3, 2005

FILED
2005 JUN -3 P 3:15
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§69-2-2. Definitions.

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

2.2. The term "Act" means the Omnibus Health Care Act which is codified at West Virginia Code §16-29D-1 et seq., as amended.

2.3. The terms "Code of West Virginia" and "West Virginia Code" mean the West Virginia Code of 1931, as amended.

2.4. The term "coordination of benefits" means a provision which establishes an order in which two or more insurance contracts, plans or programs covering the same beneficiary pay their claims, with the effect that there is no duplication of benefits.

2.5. The terms "health care", "health care services", or "health care treatments" mean clinically related preventive, diagnostic, treatment, or rehabilitative services whether provided in the home, office, hospital, clinic or any other suitable place either inside or outside the State of West Virginia provided or prescribed by any health care provider or providers. Such services include, among others, medical supplies, appliances, laboratory, preventive diagnostic, therapeutic and rehabilitative services, hospital care, nursing home and convalescent care, medical physicians, osteopathic physicians, chiropractors, and such other surgical including inpatient oral surgery, nursing, and podiatric services and supplies as may be prescribed by such health care providers but not other dental services.

2.6. The term "health care provider" means a person, partnership, corporation, facility or institution licensed, certified or authorized by law to provide professional health care services in or outside this state to an individual during this individual's medical care, treatment or confinement. For the sole purpose of this rule and the implementation of the Act, the term does not include pharmacists and pharmacies.

2.7. The term "life-threatening medical or surgical emergency" includes an emergency posing an imminent threat of significant, permanent and clearly recognizable bodily impairment such as blindness or loss of limb.

2.8. The term "this rule" means the present legislative rule which has been designated as Title 69, Series 2.

2.9. The term "the Secretary" means the Secretary of the Department of Health and Human Resources.

§69-2-3. Purpose.

3.1. The purpose of this rule is to implement the Act. In adopting the Act, the Legislature stated that it intended "to provide a framework within which the departments and divisions of state government can cooperate to effect cost savings for the provision of health care services and the payment thereof. It is the purpose of the Legislature to encourage the long-term, well-planned development of fair, equitable and cost-effective systems for all health care providers paid or reimbursed by the public employees insurance agency, the state medicaid program, the workers' compensation fund or the division of rehabilitation services". West Virginia Code, §16-29D-1(b). This same purpose is applicable to the Division of Health.

3.2. In order to achieve this purpose, the Legislature directed that the State must ensure the delivery of high quality health care services and effect cost savings in the provision of health care services. The legislature concluded that it is in the best interests of the State and its citizens for the various state departments and divisions, including the State's medical schools, which are involved in the provision of health care services and the payment thereof, to cooperate in the generation of cost savings and in ensuring the quality of the health care services delivered to the beneficiaries of all the state-supported programs.

§69-2-4. Non-Interference with the Medicaid Program.

4.1. It is expressly recognized that no other entity may interfere with the discretion and judgment given to the single state agency which administers the state's medicaid program. Thus, it is the intention of this rule that nothing contained herein shall be interpreted, construed, or applied to interfere with the powers and actions of the single state agency which, in keeping with applicable federal law, shall administer the state's medicaid program as it perceives to be in the best interest of that program and its beneficiaries.

§69-2-5. Emergency Services

The agreement of a health care provider to accept assignment of benefits of a state program beneficiary pursuant to W.Va. Code § 16-29D-4 shall not arise when the health care provider delivers health care services to a state program beneficiary which are immediately needed to resolve an imminent life-threatening medical or surgical emergency: Provided, that once the disease or injury which caused the emergency is stabilized, then further treatment of that beneficiary by the health care provider will give rise to the agreement as a matter of law. For the purpose of this subsection, stabilize means that the immediate threat of death or permanent harm has been resolved to the extent that the patient is stable and/or capable of being safely transported.

§69-2- 6. Testimony by Providers.

6.1. Nothing in this rule or in the Act prohibits a health care provider who has elected not to participate in the provision of health care services to state program beneficiaries (but who may have provided covered services to such beneficiaries prior to such election) from testifying on behalf of or against a state program beneficiary in any administrative or judicial proceeding. Divisions or agencies which otherwise have the responsibility of reimbursing such health care providers for the time expended by the provider in testifying shall continue to do so notwithstanding any other provision of this rule or the Act. Further, such testimony shall not obligate any health care provider who has previously elected not to participate in the delivery of health care services to state program beneficiaries to begin the delivery of such services.

§69-2-7. Violations and Show Cause Proceedings; Penalties.

7.1. In the event that any health care provider or other legal entity violates any provision of the Act, of this rule, of any other rule duly promulgated by the Secretary under the provisions of the Act, or any plan, order, or directive issued under the provisions of the Act or any such rule, then the Secretary may assess a civil penalty as provided by the Act and may order that the health care provider be removed from any list of approved providers for whose services a department or division may pay in the future.

7.2. Upon determining that there is probable cause to believe that a health care provider or other legal entity may be knowingly engaging in such a violation, the Secretary shall provide such health care provider or other legal entity with written notice which shall state the nature of the alleged violation and the time and place of a hearing at which such health care provider or other legal entity shall appear to show cause why a civil

penalty or removal from any list, or both, should not be imposed. Nothing in this rule shall limit the Secretary's authority to resolve informally any alleged violation, by such means as stipulation, agreed settlement, consent order, default, or other appropriate action.

7.3 At the hearing, the Secretary shall arrange to have the evidence in support of the allegations presented and shall afford the health care provider or other legal entity an opportunity to cross-examine the state's witnesses and shall afford the health care provider or other legal entity an opportunity to present testimony and enter evidence in support of its position. The State shall bear the burden of proving a violation of the Act.

7.4. The hearing shall be conducted in accordance with the administrative hearings provisions of West Virginia Code, §29A-5-1 et seq., and applicable procedural rules promulgated by the Secretary.

7.5. If, after reviewing the record of such hearing, the Secretary determines, by a preponderance of the evidence, that such health care provider is in violation of the Act, of this rule, or any other rule promulgated under the Act, or any plan, order or directive issued under the Act or such rule, the Secretary may assess a civil penalty as provided by the Act and may remove a health care provider from any list of approved providers for whose services a department or division may pay in the future. In exercising his or her discretion in fixing the amount of the penalty as well as determining whether to remove a health care provider from a list, the Secretary shall take into account the degree of willfulness shown in the violation, the nature and type of the violation, the monetary amount involved and whether the health care provider or other legal entity had personally gained by the violation, the degree of harm, if any, suffered by a beneficiary of any state supported program due to the violation, and such other factors as may be relevant to a particular case.

7.6. Any health care provider or other legal entity proceeded against under this section 7 shall receive notice in writing by certified mail of the Secretary's decision, which decision shall contain a statement of the penalty imposed, if any, whether the health care provider is to be removed from any applicable list and the Secretary's findings of fact and conclusions of law in support of the exercise of Secretary's discretion in the manner stated. The penalty and the removal may be imposed immediately by the Secretary without regard to whether or not an appeal is filed: Provided, that the Secretary, in his or her discretion, may grant a stay of enforcement or collection of the penalty or removal pending the resolution of an appeal.

7.7. As provided for by West Virginia Code, §16-29D-8, the health care provider or other legal entity may appeal the Secretary's decision. Any appeal shall be taken and be handled in accordance with West Virginia Code, §29A-5-4. The circuit court's review shall include a review of the amount of the penalty and any removal of a health care provider from a department's or division's approved provider list. The circuit court may enter a stay against the collection or enforcement of any penalty or removal order after a hearing on the request for stay: Provided, that such hearing may not be conducted on an ex parte basis.

7.8. If the health care provider or other legal entity penalized or ordered removed from a department's or division's approved provider list either loses an appeal or does not appeal such penalties or removal and fails to pay the amount of the penalty to the Secretary within thirty days or if the health care provider continues to act in a manner contrary to his or her or its removal, the Attorney General may institute a civil action in the circuit court of Kanawha County to recover the amount of the penalty or to seek an injunction. Such civil action shall be handled in an expedited manner by the circuit court and shall be assigned for hearing at the earliest possible date.

7.9. The remedies set forth in this section are intended only for violations of the Act and shall not affect any other contractual relationship between any department or division and a health care provider or other legal entity.

7.10. Any health care provider removed from a department's or division's approved provider list pursuant to this section 7 may petition the Secretary for reinstatement to such list after one-hundred and eighty (180) days from his removal. Any appeal by the provider of the Secretary's decision shall be taken and handled in accordance with West Virginia Code, §29A-5-4.

7.11. Any patient-identifying information or records obtained by the Secretary or his or her employees or agents, or by any other department or division subject to the Act, during any investigation or enforcement of the Act, this rule, or any other rule duly promulgated by the Secretary under the provisions of the Act, shall be kept confidential and, shall not be released to the public, and shall be treated in accordance with all applicable privacy laws

§ 69-2-8. Declaratory Rulings and Informal Opinions.

8.1. If in any particular instance a health care provider wishes to request that the Secretary make a determination of the applicability of any section of this rule, or of any exception contained therein, to a given state of facts, the health care provider may request either an informal opinion or a declaratory ruling from the Secretary in accordance with the provisions of West Virginia Code, §29A-4-1.

§69-2-9. Severability.

9.1. If any provision of this rule or the application thereof to any entity or circumstance is held invalid, such invalidity does not affect the provisions or the applications of this rule which can be given effect without the invalid provisions or application, and to this end the provisions of this rule are severable.