

KEN HECHLER
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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(Plus all the volunteer
help we can get)

October 1, 1991

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Health and Human Resources

RULE: Implementation of Omnibus Health Care Act Payment Provisions

DATE FILED AS AN EMERGENCY RULE: August 30, 1991

DECISION NO. 87-91

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Oct. 1, 1991
ADMINISTRATIVE LAW DIVISION

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DECISION

EMERGENCY RULE DECISION (ERD 87-91)

AGENCY: Health and Human Resources
RULE: Implementation of Omnibus Health Care Act Payment
Provisions
FILED AS AN EMERGENCY RULE: August 30, 1991

- par. 1 The Department of Health and Human Resources (Department) has filed the above amendments as an emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Department filed this emergency rule with supporting documents with the Secretary of State August 30, 1991 and with the LRMRC August 30, 1991.

par. 7 It is the determination of the Secretary of State that the Department has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §16-29D-7 reads:

The secretary of the department of health and human resources shall promulgate rules to carry out the provisions of this article. . . The policies and procedures of the rate schedule process setting forth the methodology for determination of rates, payments and schedules are subject to the legislative rule-making procedures of §29A-1-1 et seq. of this code; Provided, That emergency rules may be utilized.

par. 9 It is the determination of the Secretary of State that the Department not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the are as follows:

Promulgation of the amendments to this rule is necessary for the immediate preservation of the public peace, health, safety and welfare and to prevent substantial harm to the public interest.

The fee schedule now in effect for the Public Employees Insurance Agency has become outdated and inequitable, and is causing significant problems for public employees, health care providers and the PEIA.

The current schedule is based on 1988 charges. Fees for certain health care services, most especially primary care services, are now too low. This is causing problems of access to needed care for PEIA insured employees, as some physicians are choosing not to treat PEIA patients. These problem fees are for primary and preventive health care services; should patients be unable to obtain these basic and early intervention services, it is possible they will incur greater expenses due to waiting until health problems worsen or become symptomatic.

The current schedule has not been updated and contains obsolete billing codes. This causes confusion and delays in reimbursement to providers who, appropriately, bill according to current codes. The claims payment system rejects these codes, and the provider is not paid for legitimate services. In addition, the current fee schedule allows billing under certain nonspecific, "catch-all" codes. If used inappropriately, these codes enable a provider to bill a higher fee than would otherwise be paid if the service were billed under the appropriate code. The rate of billing the PEIA under these nonspecific codes is unusually high, which means the agency is unnecessarily paying out higher fees than it should.

Finally, in order to obtain necessary cost savings, the PEIA Finance board has imposed a discount on payments to providers, regardless of whether the provider's charges have been capped by the existing fee schedule. This discount has the effect of penalizing low-cost providers, and also causes great confusion on the part of providers and insureds alike, as to what this amount represents, and whether or not the insured is responsible for paying it.

The new fee schedule described in the amendments to this rule will eliminate the problems described above. The new schedule is derived from 1991 and 1990 claims data collected by the Health Insurance Association of America ("HIAA"). Consequently, fees will be based on current charges. HIAA updates its claims data every six months, which will enable the PEIA, if the fiscal situation permits, to update its fee schedule.

The new fee schedule will also be updated regularly with new procedure codes, and most of the non-specific codes will be eliminated. Finally the confusing and inequitable discount will be eliminated.

The new schedule is designed to be budget-neutral. It will, however, result in a fairer distribution of payments and eliminate those barriers creating access to care problems for PEIA insureds.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "immediate preservation of public peace, health, safety or welfare" and "time limitation".

par. 14 This decision shall be cited as Emergency Rule Decision 87-91 or ERD 87-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Department of Health and Human Resources, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE Oct. 1, 1991
ADMINISTRATIVE LAW DIVISION

Entered _____