

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #7

Do not mark in this box  
Filing Date

FILED

2011 JUN -9 PM 3:26

WEST VIRGINIA  
SECRETARY OF STATE  
Effective Date

**NOTICE OF AN EMERGENCY RULE**

AGENCY: WV Health Insurance Plan TITLE NUMBER: 113

CITE AUTHORITY W.Va. Code §33-48-7b

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Premium Subsidy

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

PLEASE SEE ATTACHED



Charles O. Lorensen  
Cabinet Secretary  
West Virginia Department of Revenue

Use additional sheets if necessary

Board of Directors of the West  
Virginia Health Insurance Plan  
Emergency Rule  
Title 113, Series 1

**Title 113, Series 1 - Emergency Rule  
PREMIUM SUBSIDY**

**FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY:**

HB 2976, enacted in March 2011 and effective June 11, 2011, expressly authorizes emergency rules to establish eligibility criteria for the subsidy program.

**§33-48-7b. Surplus available to subsidize premiums.**

*Whenever the board determines that the account created pursuant to section seven-a of this article contains a surplus above those amounts necessary to provide fully for the expected costs of claims and other expenses listed in subsection (a), section seven of this article, the plan may use such surpluses to subsidize the premium of enrollees with an annual average household income at or below four hundred percent of the federal poverty level. The board may propose emergency rules and shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish eligibility criteria for enrollees who are eligible for premium subsidy pursuant to this section.*

Board of Directors of the West  
Virginia Health Insurance Plan  
Emergency Rule  
Title 113, Series 1

**PREMIUM SUBSIDY**

**TITLE 113, SERIES 1**

**BRIEF SUMMARY OF RULE**

This rule changes the maximum income level for eligibility for the subsidies for the state high risk plan (the WV Health Insurance Plan or "AccessWV"). The current rule sets the maximum at 200% of the federal poverty level, this amendment raises it to 400% to reflect the 2011 statutory change. The amendment also defines "Average annual household income," a term used in the statute, to be the income reported on the applicant's last year's federal tax return plus any unreported income such as child support, etc. of any household member.

Board of Directors of the West  
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**PREMIUM SUBSIDY**

**TITLE 113, SERIES 1**

**STATEMENT OF CIRCUMSTANCES**

In 2009, the Legislature enacted W. Va. Code §33-48-7b that permitted the governing board of the state high risk pool (WV Health Insurance Plan or "AccessWV") to use surpluses in AccessWV's account to subsidize premiums for low-income enrollees. The initial version of the implementing legislative rule, 113 CSR 1 (effective April 14, 2010), set the income eligibility level at 200% of federal poverty level (FPL). In 2011, the Legislature enacted HB2876 that increased the eligibility level to 400% of FPL and expressly authorized emergency rules to effect this change. This amendment to the implementing rule reflects this change.

Board of Directors of the West  
Virginia Health Insurance Plan  
Emergency Rule  
Title 113, Series 1

## QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

**DATE:** June 9, 2011

**TO:** LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

**FROM:** WEST VIRGINIA HEALTH INSURANCE PLAN  
1124 Smith Street  
Post Office Box 50540  
Charleston, West Virginia 25305-0540

**EMERGENCY RULE TITLE:** Premium Subsidy Title 113, Series 1)

**1. Date of Filing:**

June 9, 2011.

**2. Statutory authority for promulgating emergency rule:**

W. Va. Code §33-48-7b (as amended by HB 2876, effective June 11, 2011).

**3. Date of filing of proposed legislative rule:**

June 8, 2011.

**4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?**

Amends a current legislative rule, 113 CSR 1.

**5. Has the same or similar emergency rule previously been filed and expired?**

No.

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Virginia Health Insurance Plan  
Emergency Rule  
Title 113, Series 1

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety and welfare.

N/A (see #2 above)

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A (see #2 above)

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to public interest.

N/A (see #2 above)

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Premium Subsidy (Title 113, Series 1)

Type of Rule:      Legislative      Interpretive      Procedural   X   Emergency

Agency: WV Offices of the Insurance Commissioner

Address: Post Office Box 50540  
1124 Smith Street, Greenbrooke Building  
Charleston, West Virginia 25305-0540

Phone Number: (304) 558-6279 x1210 Email: Timothy.Murphy@wvinsurance.gov

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The emergency rule will have no impact on costs and revenues of state government

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

<b>FISCAL YEAR</b>			
<b>Effect of Proposal</b>	<b>Current Increase/Decrease (use "-")</b>	<b>Next Increase/Decrease (use "-")</b>	<b>Fiscal Year (Upon Full Implementation)</b>
<u>N/A</u>			
<b>1. Estimated Total Cost</b>			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
<b>2. Estimated Total Revenues</b>			

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

N/A

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

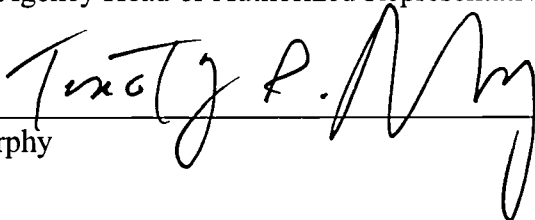
The subsidy program has been operating for a year. The statute and corresponding rule change only change the eligibility criteria for the subsidy. The funds for the subsidy itself will come from a \$13M surplus that has been accumulated over the past several years from an assessment on hospitals (see WV Code 33-48-7(b)) and which the Plan actuary has determined is sufficient to support the subsidy costs; the Board has voted not to take the assessment for SFY12 (July 1, 2011).

Date: \_\_\_\_\_

6-9-11

Signature of Agency Head or Authorized Representative

\_\_\_\_\_  
Timothy Murphy



**TITLE 113  
EMERGENCY RULE  
BOARD OF DIRECTORS OF THE  
WEST VIRGINIA HEALTH INSURANCE PLAN**

**SERIES 1  
PREMIUM SUBSIDY**

**Sections**

- 113-1-1. General.
- 113-1-2. Definitions.
- 113-1-3. Determination of Surplus.
- 113-1-4. Eligibility for Premium Subsidy.
- 113-1-5. Delegation of Authority to Plan Administrator.

**TITLE 113  
LEGISLATIVE RULE  
BOARD OF DIRECTORS OF THE  
WEST VIRGINIA HEALTH INSURANCE PLAN**

**SERIES 1  
PREMIUM SUBSIDY**

FILED  
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OFFICE OF THE CLERK  
SECRETARY OF STATE

**§113-1-1. General.**

1.1. Scope. -- The purpose of this rule is to establish criteria for certain individuals to obtain a premium subsidy with the West Virginia Health Insurance Plan.

1.2. Authority. -- W. Va. Code §§~~33-2-10~~ and 33-48-7b.

1.3. Filing Date. --

1.4. Effective Date. -- July 1, 2011

**§113-1-2. Definitions.**

2.1. "Average annual household income" means the Total Income reported on the prior year's federal tax return for all individuals in the applicant's or member's household, plus any other Income received by any household member, including but not limited to non-taxed Social Security income, child support, disability payments, veterans' benefits, and public assistance.

~~2.1.~~ 2.2. "Board" means the Board of Directors of the Plan.

~~2.2.~~ 2.3. "Low-income eligible individuals" means those persons having an annual household income at or below ~~200%~~ 400% of the federal poverty level who are otherwise eligible for coverage under the Plan as provided in W. Va. Code §33-48-4.

~~2.3.~~ 2.4. "Plan" means the West Virginia Health Insurance Plan as created in W. Va. Code §33-48-2.

~~2.4.~~ 2.5. "Plan Administrator" means the administrator of the Plan selected by the Board pursuant to W. Va. Code §33-48-6.

~~2.5.~~ 2.6. "Premium subsidy" means the difference between the amount of periodic payment the Plan Administrator makes to the Plan on behalf of the low-income eligible individual plus the administrative cost to the Plan of providing the Plan to that low-income eligible individual, and the amount determined by the Board to be the low-income eligible individual's premium responsibility.

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Title 113, Series 1**

~~2.6.~~ 2.7. “Surplus” means funds being held in the West Virginia Health Insurance Plan Fund pursuant to W. Va. Code §33-48-7a that are above those amounts necessary to provide fully for the expected costs of claims and other expenses listed in W. Va. Code §33-48-7(a).

**§113-1-3. Determination of Surplus.**

3.1. The Board shall periodically, but no less than annually, determine if a surplus exists.

3.2. In making a determination concerning the existence of a surplus, the Board may consider an actuarial analysis and any other information developed by or presented to the Board that demonstrates the status of a surplus.

**§113-1-4. Eligibility for Premium Subsidy.**

4.1. In the event the Board determines that a surplus exists, the Board shall create a schedule of premium subsidies that varies with income to assist low income eligible individuals in paying the premium costs of the Plan. The Board may adopt as many income categories within the premium subsidy schedule as it finds necessary and practical.

4.2. For the purposes of determining the eligibility of a person for a premium subsidy, ~~the household income shall be based on the preceding twelve months and~~ the Board may consider information obtained from ~~the West Virginia Department of Health and Human Resources or any other state or federal agency.~~ The eligibility of low income eligible individuals who receive a premium subsidy shall be ~~periodically, but no less than annually;~~ annually reassessed by the Board.

4.3. No person shall be eligible for a premium subsidy if that person’s premium is paid by a third party who is not a family member of the person.

4.4. Whenever the Board finds that there is a significant possibility that premium subsidies may result in an over-expenditure of the surplus, the Board may discontinue the use of the surplus to subsidize premiums until the Board determines that the possibility for over-expenditure no longer exists. The Board shall give low income eligible individuals who are receiving a premium subsidy thirty days’ notice prior to such a discontinuance.

**§113-1-5. Delegation of Authority to Plan Administrator.**

5.1. The Board may delegate or assign any of its authority or duties set forth in this rule to the Plan Administrator.