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2011 JUN 30 PM 4:38

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June 30, 2011

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Health Insurance Plan

RULE: Amendment, 113CSR1, Premium Subsidy

DATE FILED AS AN EMERGENCY RULE: June 9, 2011

DECISION NO. 4-11

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

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 4-11)

AGENCY: West Virginia Health Insurance Plan
RULE: Amendment, 113CSR1, Premium Subsidy
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par. 1 The West Virginia Health Insurance Plan (AccessWV) has filed the above amendment to an existing rule as an emergency rule.

par. 2 W. Va. Code §29A-3-15a 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-3-15a].

par. 4 (A) Procedural Compliance: W. Va. 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 AccessWV filed this emergency rule with supporting documents with the Secretary of State June 9, 2011 and with the LRMRC June 9, 2011.

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

par. 8 (B) Statutory Authority -- W. Va. Code §33-48-7b reads:

§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 certain low income enrollees whose eligibility shall be established by legislative rule. The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter

twenty-nine-a of this code to establish criteria for enrollees with low income eligible for premium subsidy pursuant to this section.

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

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) 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.

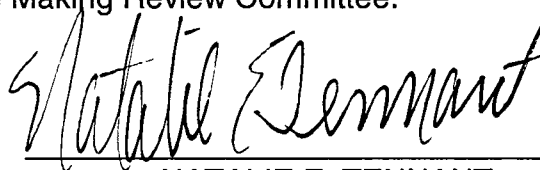
par. 12 The facts and circumstances as presented by the AccessWV are as follows:

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.

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(f). . . "authority by Legislature in HB 2876"

par. 14

This decision shall be cited as Emergency Rule Decision 4-11 or ERD 4-11 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Health Insurance Plan, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

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