

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

Form #3

Do Not Mark In this Box

2011 JUL 28 PM 2: 32

WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Board of Directors of the West Virginia Health Insurance Plan TITLE NUMBER: 113

CITE AUTHORITY W. Va. Code §33-48-7b

AMENDMENT TO AN EXISTING RULE: YES NO

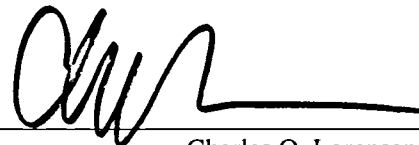
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 01

TITLE OF RULE BEING AMENDED: Premium Subsidy

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Charles O. Lorensen
Cabinet Secretary
West Virginia Department of Revenue

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: July 28, 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: BOARD OF DIRECTORS OF THE WEST VIRGINIA
HEALTH INSURANCE PLAN
ATTN: OIC - Legal Division
1124 Smith Street
Post Office Box 50540
Charleston, West Virginia 25305-0540

LEGISLATIVE RULE TITLE: Premium Subsidy
(Title 113, Series 01)

1. Authorizing statute(s) citation:

W. Va. Code §33-48-7b.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 8, 2011 (notice of public comment period).

b. What other notice, including advertising, did you give of the hearing?

N/A

c. Date of Public Hearing(s) or Public Comment Period ended:

Public comment period ended July 8, 2011.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

**e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)**

Board of Directors of the
WV Health Insurance Plan
Title 113, Series 01

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Timothy Murphy, Associate Counsel
Offices of the Insurance Commissioner
P.O. Box 50540
Charleston WV 25305
304-558-6279, Ext. 1210
304-558-1362 FAX
Timothy.Murphy@wvinsurance.gov

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

N/A

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

N/A

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.
- b. Date of hearing or comment period:
- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?
- d. Attach findings and determinations and reasons:

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

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 HB 2876 that increased the eligibility level to 400% of FPL. This amendment to the implementing rule reflects this change.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: X Legislative Interpretive Procedural Emergency

Agency: Board of Directors of the West Virginia Health Insurance Plan

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 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.

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

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

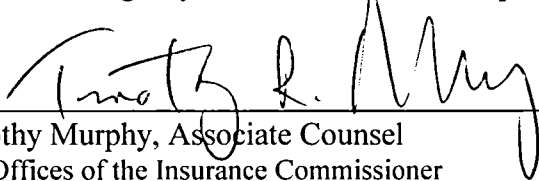
MEMORANDUM

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 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: 7-28-11

Signature of Agency Head or Authorized Representative



Timothy Murphy, Associate Counsel
WV Offices of the Insurance Commissioner
P. O. Box 50540
Charleston WV 25305-0540
Timothy.Murphy@wvinsurance.gov

**TITLE 113
LEGISLATIVE 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**

FILED
2011 JUL 28 PM 2:32

**SERIES 1
PREMIUM SUBSIDY**

OFFICE OF THE
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. --

§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.

**Board of Directors of the
WV Health Insurance Plan
Legislative Rule
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.