

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

Form #2

Do Not Mark In this Box
2009 MAY 26 PM 3:08
OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

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

RULE TYPE: Legislative CITE AUTHORITY W. Va. Code §§33-2-10 and
33-48-8(d)(1)

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 2

TITLE OF RULE BEING PROPOSED: Pre-existing Conditions Exclusion

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON 6/25/09 AT 5:00 PM. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

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

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Virgil T. Helton
Cabinet Secretary
West Virginia Department of Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Offices of the Insurance Commissioner
Legislative Rule
Title 113, Series 2

PRE-EXISTING CONDITIONS EXCLUSION

TITLE 113, SERIES 2

BRIEF SUMMARY OF RULE

Current law provides that persons enrolling in AccessWV, the state's high risk plan, are ineligible for coverage of the treatment of pre-existing conditions for the first six months of enrollment; the reason for the rule is to discourage potential enrollees from waiting to enroll until their pre-existing condition requires immediate attention. WV Code §33-48-8(d)(1) provides in pertinent part:

Plan coverage shall exclude charges or expenses incurred during the first six months following the effective date of coverage as to any condition for which medical advice, care or treatment was recommended or received as to such conditions during the six-month period immediately preceding the effective date of coverage...

This six-month exclusion does not apply to a "federally defined eligible individual," who is a person who previously had "creditable coverage" for 18 months.

The Legislature has given the AccessWV Board of Directors the authority to propose a rule to add new classes of persons who would similarly be able to escape the six-month treatment-exclusion or waiting period for pre-existing conditions. See SB 408 (RS 2009). The Board is now recommending that certain other persons who are coming into the AccessWV plan also be exempted from all or part of the waiting period. These groups are persons who were covered by a public program (e.g. Medicaid), another state high-risk plan, or a private plan with premiums in excess of a similar AccessWV plan. In either of the latter 2 instances in which the person had not yet met the prior plan's pre-existing condition waiting period, that person would be given credit against the AccessWV's 6-month waiting period for any time credited against the prior plan's waiting period.

Offices of the Insurance Commissioner
Legislative Rule
Title 113, Series 2

PRE-EXISTING CONDITIONS EXCLUSION

TITLE 113, SERIES 2

STATEMENT OF CIRCUMSTANCES

Current law provides that persons enrolling in AccessWV, the state's high risk plan, are ineligible for coverage of the treatment of pre-existing conditions for the first six months of enrollment. In SB 408 (RS 2009), the Legislature gave the AccessWV Board of Directors the authority to propose a rule to add new classes of persons who would be able to escape this six-month waiting period. See WV Code 33-48-8(d)(1). The Board is now recommending that several groups be exempted from the waiting period -- persons coming into AccessWV from Medicaid or another public program, another state's high risk plan or private individual plan with premiums higher than the AccessWV's policy.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Pre-existing Conditions Exclusion (Title 113-Series 2)

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) 558-0401 Email:

Fiscal Note Summary

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

This rule will have no additional fiscal impact upon 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
Other	N/A	N/A	N/A
2. Estimated Total Revenues	N/A	N/A	N/A

Rule Title: Pre-existing Conditions Exclusion (Title 113-Series 2)

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.

Date: 5-26-09

Signature of Agency Head or Authorized Representative

JANE L. CLINE
Jane L. Cline, Ex Officio Member & Chairperson of the Board of Directors of the West Virginia Health Insurance Plan

[Signature]
Deputy Commissioner

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

**SERIES 2
PRE-EXISTING CONDITIONS EXCLUSION**

Section

- 113-2-1. General.
- 113-2-2. Definitions.
- 113-2-3. Persons not Subject to the Pre-existing Condition Exclusion Period.

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

SERIES 2
PRE-EXISTING CONDITIONS EXCLUSION

FILED

MAY 26 PM 3: 08

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SECRETARY OF STATE

§113-2-1. General.

1.1. Scope. -- The purpose of this rule is to provide additional classes of individuals to which the waiting period for pre-existing condition exclusions does not apply.

1.2. Authority. -- W.Va. Code §§33-2-10 and 33-48-8(d)(1).

1.3. Filing Date. --

1.4. Effective Date. --

§113-2-2. Definitions.

2.1. "Creditable coverage," "Plan" and "significant break in coverage" have the same meanings assigned to them in W. Va. Code §33-48-1(d).

2.4. "Pre-existing condition exclusion" means the exclusion of charges or expenses incurred during the first six months following the effective date of coverage as to any condition for which medical advice, diagnosis, care or treatment was recommended or received as to such condition during the six-month period immediately preceding the effective date of coverage.

§113-2-3. Persons not Subject to the Pre-existing Condition Exclusion Period.

3.1. In addition to federally defined eligible individuals and those persons to whom W. Va. Code §33-48-8(d)(2) applies, an enrollee covered by the Plan is not subject to the pre-existing condition exclusion imposed by W. Va. Code §33-48-8(d) if that person, without a significant break in coverage, either had prior creditable coverage of eighteen months or more, regardless of whether that coverage was terminated voluntarily or involuntarily, or was previously:

a. Enrolled in Medicaid, Medicare, the State Children's Health Insurance Program or any other public health insurance program that does not impose a waiting period before treatment for a pre-existing condition and who is enrolling in the Plan without a significant break in coverage: *Provided*, That with respect to any person who was enrolled in such a program for less than six months prior to enrollment in the Plan, such person will be

**Board of Directors of the
WV Health Insurance Plan
Title 113, Series 2
Legislative Rule**

deemed to have satisfied a portion of the six-month waiting period imposed by W. Va. Code §33-48-8(d)(1) equal to the previous enrollment period of such program;

b. Covered under another state's high-risk plan; or

c. Covered under an individual health insurance policy and who is enrolling in the Plan because premiums for the previous coverage were in excess of those charged under the Plan for similar coverage.

3.2. With respect to any person to whom subdivision b or c, subsection 3.1 of this section applies and who had not satisfied, respectively, the individual policy's or the other state's high-risk plan's pre-existing condition waiting period, if any, such person will be deemed to have satisfied a portion of the six-month waiting period imposed by W. Va. Code §33-48-8(d)(1) equal to the waiting period such person had satisfied under such previous coverage.

3.3. Disputes regarding the applicability of this rule shall be decided in the same manner as other disputes concerning eligibility.