

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

Form #3

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Health Insurance Plan
Insurance Commissioner TITLE NUMBER: 113

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

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

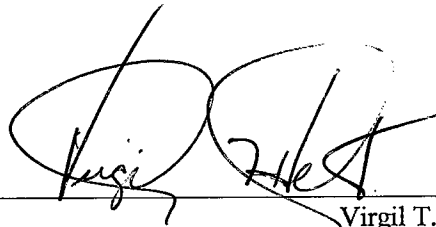
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 2

TITLE OF RULE BEING PROPOSED: Pre-existing Conditions Exclusion

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.



Virgil T. Helton
Cabinet Secretary
West Virginia Department of Revenue

#4.60

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.

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:

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: OFFICE OF THE INSURANCE COMMISSIONER
ATTN: Legal Division
1124 Smith Street
Post Office Box 50540
Charleston, West Virginia 25305-0540

LEGISLATIVE RULE TITLE: Pre-existing Conditions Exclusion, Title
113, Seris 2

1. Authorizing statute(s) citation:

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

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

May 26, 2009 - 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:

June 25, 2009. - End of Comment Period

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

Attached X No comments received

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

- 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 R. Murphy, Associate Counsel
West Virginia Insurance Commission
Legal Division
P.O. Box 50540
Charleston, WV 25305-0540
Phone: (304) 558-6279, Ext. 1210
Fax: (304) 558-1362
E-mail: 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)

Same.

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.

N/A

- b. Date of hearing or comment period:

N/A

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

- d. Attach findings and determinations and reasons:

N/A

Timothy Murphy

From: David Haden [david@davidhaden.com]
Sent: Thursday, June 25, 2009 3:35 PM
To: Nancy Malecek
Cc: Timothy Murphy
Subject: Re: FW: Proposed AccessWV Rule

My concern is if we change the wait on the new entrants(eligability requirements) our plan will not be creditable. This will need some actuarial study before we change.

David Haden P O Box 1428 Charleston W V 25325 304-720-2000 ext. 211

--- On Thu, 6/25/09, Nancy Malecek <Nancy.Malecek@wvinsurance.gov> wrote:

From: Nancy Malecek <Nancy.Malecek@wvinsurance.gov>
 Subject: FW: Proposed AccessWV Rule
 To: "David Haden" <david@davidhaden.com>
 Cc: "Timothy Murphy" <Timothy.Murphy@wvinsurance.gov>
 Date: Thursday, June 25, 2009, 3:21 PM

David,

Please Reply to Tim and me with a comment that extending the eligible classes should be discussed at greater length.
 Thank you!

From: Nancy Malecek
Sent: Wednesday, June 24, 2009 1:44 PM
To: David Haden
Cc: Timothy Murphy
Subject: Proposed AccessWV Rule
Importance: High

David,

Although I was not on the telephone discussion in May of the proposed AccessWV Rules, I understand that you had some questions or concerns about expanding the Pre-X waiting period waiver to additional classes of applicants. As you know, the proposed Rule <http://www.wvsos.com/adlaw/proposed/113-02.pdf> is out for comment, but the comment period expires tomorrow, June 25, at 5p. To be able to continue the discussion and have an opportunity to modify the Rule, we need to have a Comment made, which can be accomplished by an e-mail to Tim Murphy at Timothy.Murphy@wvinsurance.gov. If you can send something to Tim today or tomorrow, we'll be able to discuss at the AccessWV Board meeting on Tuesday, June 30th (1p), and produce a better, clearer, statement for guiding what we want to accomplish.

Thanks very much,

Nancy

Nancy Maleček
 Insurance Market Analyst and Acting Director, AccessWV
 West Virginia Offices of the Insurance Commissioner
 Research/Executive Division
 304-558-6279 x1175
 304-558-0138 (fax)
Nancy.Malecek@wvinsurance.gov

6/30/2009

ATTACHEMENT TO QUESTION 2 (d):

One comment was received that suggested that actuarial studies be performed before the waiting period for coverage of pre-existing conditions is waived for new classes of enrollees in the high risk plan. The basis of this comment is that a categorical waiver of the waiting period has a cost that should be determined before any decision is made to grant additional waivers.

The Board of Directors agrees that no additional waivers should be instituted without examination of the costs involved. The Board is of the opinion that the statute, which permits but does not mandate a rule to propose additional classes of persons to which the waiver would apply, can be amended to permit the Board to condition the extension of such waivers on a determination by the Board that the cost of doing so is acceptable. Accordingly, the proposed rule has been amended to replace the categorical additional of defined classes to which the waiting period would not apply with a process by which the Board could, "on the basis of actuarial review or otherwise," add a class or classes if it determines that there would be no "undue adverse impact" on the Plan.

As initially proposed, persons coming into the WV Plan from either another state's high risk plan or from an individual health insurance policy and who had not yet satisfied such other plan's pre-existing condition waiting period, would be given credit toward meeting the WV Plan's six-month period (WV Code §33-48-8(d)(1)) in the same number of days that the person had fulfilled toward meeting the other state's waiting period. Due to the same concerns about potential fiscal impact, the Board amends the proposed rule to make this credit based on time met in another plan (in an individual policy or in another state's high risk plan) be subject to a determination of the Board. The amended sections would read as follows:

§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, the Board may approve the waiver of the pre-existing exclusion for one or more of the following classes of enrollees if the Board finds, on the basis of actuarial review or otherwise, that the addition of such class or classes will not have an undue adverse effect on the overall operation of the Plan. ~~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. A person, without a significant break in coverage, who had prior creditable coverage of eighteen months or more, regardless of whether that coverage was terminated voluntarily or involuntarily.

b. ~~A person who was previously enrolled~~ 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, the Board may decide that 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 previous enrollment period of such program;

~~b. c. A person who was previously covered~~ Covered under another state's high-risk plan: *Provided*, That with respect to any such person who had not satisfied the other state's high-risk plan's pre-existing condition waiting period, if any, the Board may decide that 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. or

~~e. d. A person who was previously covered~~ 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: *Provided*, That with respect to any such person who had not satisfied the prior health plan's pre-existing condition waiting period, if any, the Board may decide that 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.

~~3.2. 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.~~

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: _____

Signature of Agency Head or Authorized Representative

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

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.

**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**

§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, the Board may approve the waiver of the pre-existing exclusion for one or more of the following classes of enrollees if the Board finds, on the basis of actuarial review or otherwise, that the addition of such class or classes will not have an undue adverse effect on the overall operation of the Plan.

a. A person, without a significant break in coverage, who had prior creditable coverage of eighteen months or more, regardless of whether that coverage was terminated voluntarily or involuntarily.

b. A person who was previously 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

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

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, the Board may decide that 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 previous enrollment period of such program;

c. A person who was previously covered under another state's high-risk plan: *Provided*, That with respect to any such person who had not satisfied the other state's high-risk plan's pre-existing condition waiting period, if any, the Board may decide that 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. or

d. A person who was previously 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: *Provided*, That with respect to any such person who had not satisfied the prior health plan's pre-existing condition waiting period, if any, the Board may decide that 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.

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