WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 167

(SENATOR SNYDER, ORIGINAL SPONSOR)

[PASSED MARCH 8, 2014; IN EFFECT FROM PASSAGE.]
AN ACT to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Revenue; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the State Tax Department to promulgate a legislative rule relating to the municipal sales and service and use tax administration; authorizing the State Tax Department to promulgate a legislative rule relating to the special reclamation tax credit; authorizing the State Tax Department to promulgate a legislative rule relating to the withholding or denial of personal income tax refunds from taxpayers who owe municipal or magistrate court costs;
authorizing the Insurance Commissioner to promulgate a legislative rule relating to utilization review and benefit determination; authorizing the Insurance Commissioner to promulgate a legislative rule relating to a health plan insurer internal grievance procedure; authorizing the Insurance Commissioner to promulgate a legislative rule relating to external review of adverse health insurance determinations; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to private club licensing; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to farm wineries; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to the sale of wine; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to nonintoxicating beer licensing and operations procedures; and authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing.

Be it enacted by the Legislature of West Virginia:

That article 7, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. State Tax Department.

1 (a) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section eleven-c, article ten, chapter eleven of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 26, 2013, relating to the State Tax
Department (municipal sales and service and use tax administration, 110 CSR 28), is authorized.

(b) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section eleven, article three, chapter twenty-two of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 26, 2013, relating to the State Tax Department (special reclamation tax credit, 110 CSR 29), is authorized.

(c) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section two-c, article three, chapter fifty of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 26, 2013, relating to the State Tax Department (withholding or denial of personal income tax refunds from taxpayers who owe municipal or magistrate court costs, 110 CSR 40), is authorized.

§64-7-2. Insurance Commissioner.

(a) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section four, article sixteen-h, chapter thirty-three of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 1, 2013, relating to the Insurance Commissioner (utilization review and benefit determination, 114 CSR 95), is authorized with the following amendments:

On page one, subsection 1.1., after the words “and benefit determinations” by inserting a comma;
On page one, subsection 2.1., by striking out the word "healthcare" and inserting in lieu thereof the words "health care";

On page two, subsection 2.6., after the word "specialty" by striking out the word "as" and inserting in lieu thereof the word "that";

On page three, subsection 2.15., by striking out the word "no" and inserting in lieu thereof the word "not";

On page three, subsection 2.16., by striking out the words "except as otherwise specifically exempted in this definition" and inserting in lieu thereof the words "but excluding the excepted benefits defined in 42 U.S.C. § 300gg-91 and as otherwise specifically excepted in this rule";

On page five, subsection 2.17., by striking out the word "state" and inserting in lieu thereof the words "West Virginia";

On page five, subsection 2.24., by striking out the word "in" and inserting in lieu thereof the word "an";

On page six, subsection 2.28., by striking out the word "that" and inserting in lieu thereof the words "the one";

On page six, subdivision 2.30.a., by striking out the words "the covered person’s life, health or ability to regain maximum function or in the opinion of an attending health care professional with knowledge of the covered person’s medical condition, would subject the covered person to severe pain that cannot be adequately managed without the health care service or treatment that is the subject of the request." and inserting in lieu thereof the words "the life or health of the covered person or the ability of the covered person to regain maximum function; or";
On page six, after subdivision 2.30.a., by inserting a new subdivision, designated subdivision 2.30.b., to read as follows:

2.30.b. In the opinion of an attending health care professional with knowledge of the covered person’s medical condition, would subject the covered person to severe pain that cannot be adequately managed without the health care service or treatment that is the subject of the request.

And by relettering the remaining subdivisions;

On page six, subdivision 2.30.b., by striking out “2.30.a” and inserting in lieu thereof “2.30.d”;

On page eight, subsection 6.1., by striking out the words “an entity” and inserting in lieu thereof the words “a person”;

On page eight, subsection 6.1., after the word “Commissioner” by inserting the words “or by statute or legislative rule”;

On page nine, after paragraph 6.3.a.4., by inserting a new paragraph, designated paragraph 6.3.a.5., to read as follows:

6.3.a.5. For purposes of calculating the time period for refiling the benefit request or claim, the time period shall begin to run upon the covered person’s receipt of the notice of opportunity to resubmit.

On page ten, subdivision 7.1.b., by striking out the words “a determination is required to be made under subsections 7.2 and 7.4” and inserting in lieu thereof the words “prospective and retrospective review determinations are required to be made”;
On page eleven, paragraph 7.1.e.1., after the word “number” by inserting the word “of”;

On page twelve, subdivision 7.2.b., by striking out the words “health carrier” and inserting in lieu thereof the word “issuer”;

On page fourteen, subdivision 7.3.c., by striking out the comma and the word “and”;

On page fifteen, subdivision 8.1.a., by striking out the words “health carrier” and inserting in lieu thereof the word “issuer”;

On page fifteen, after subdivision 8.1.b., by inserting a new paragraph, designated paragraph 8.1.b.1., to read as follows:

8.1.b.1. If the covered person has failed to provide sufficient information for the issuer to determine whether, or to what extent, the benefits requested are covered benefits or payable under the issuer’s health benefit plan, the issuer shall notify the covered person as soon as possible, but in no event later than twenty-four (24) hours after receipt of the request, either orally or, if requested by the covered person, in writing of this failure and state what specific information is needed. The issuer shall provide the covered person a reasonable period of time to submit the necessary information, taking into account the circumstances, but in no event less than forty-eight (48) hours after notifying the covered person or the covered person’s authorized representative of the failure to submit sufficient information.;

And by renumbering the remaining paragraphs;

On page seventeen, subparagraph 8.2.a.9.A., by striking out “8.2.a.8” and inserting in lieu thereof “8.2.a.7”;
On page seventeen, subparagraph 8.2.a.9.B., by striking out "subparagraph 8.2.a.9.A" and inserting in lieu thereof "paragraph 8.2.a.8";

On page nineteen, subdivision 9.3.d., after the words "providers, paragraph" by striking out "9.3.c.3" and inserting in lieu thereof "9.3.c.1";

On page nineteen, subdivision 9.3.d., after the words "amount in paragraph" by striking out "9.3.c.3" and inserting in lieu thereof "9.3.c.1";

And,

On page nineteen, paragraph 9.3.d.2., after the word "benefits" by adding a period.

(b) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section four, article sixteen-h, chapter thirty-three of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 1, 2013, relating to the Insurance Commissioner (health plan insurer internal grievance procedure, 114 CSR 96), is authorized with the following amendments:

On page one, section two, by striking out the heading "§114-96-1. Definitions." and inserting in lieu thereof the heading "§114-96-2. Definitions."

On page one, subsection 2.1., by striking out the word "healthcare" and inserting in lieu thereof the words "health care";
On page one, subsection 2.1., after the word "terminated" by adding a period;

On page two, subdivision 2.3.a., by striking out the word "external" and inserting in lieu thereof the word "internal";

On page two, subdivision 2.3.c., after the word "professional" by adding a semicolon;

On page two, subsection 2.6., by striking out the word "as" and inserting in lieu thereof the word "that";

On page three, subsection 2.15., by striking out the word "no" and inserting in lieu thereof the word "not";

On page four, subsection 2.18., by striking out the words "except as otherwise specifically exempted in this definition" and inserting in lieu thereof the words "but excluding the excepted benefits defined in 42 U.S.C. § 300gg-91 and as otherwise specifically excepted in this rule";

On page five, subsection 2.19., by striking out the word "state" and inserting in lieu thereof the words "West Virginia";

On page six, subsection 2.26., by striking out the word "in" and inserting in lieu thereof the word "an";

On page seven, subsection 2.30., by striking out the word "that" and inserting in lieu thereof the words "the one";

On page seven, subdivision 2.32.c., by striking out "2.35.b" and inserting in lieu thereof "2.32.d";

On page nine, subsection 4.2., by striking out the words "subdivision a of";
On page ten, subdivision 5.4.a., after "5.4.a." by striking out the period;

On page eleven, after subdivision 5.6.c., by inserting a new subdivision, designated subdivision 5.6.d., to read as follows:

5.6.d. The issuer shall make the provisions of subsection 5.4 known to the covered person within three working days after the date of receipt of the grievance.;

On page thirteen, subdivision 5.8.g., by striking out the word "upholds" and inserting in lieu thereof the word "denies";

On page thirteen, paragraph 5.8.g.4., after the word "either" by inserting the word "the";

On page thirteen, paragraph 5.8.g.5., after the word "circumstances" by inserting a comma;

On page thirteen, paragraph 5.8.g.5., by striking out the word "provide" and inserting in lieu thereof the word "provided";

On page thirteen, subparagraph 5.8.g.6.A., by striking out "5.4.g.4" and inserting in lieu thereof "5.8.g.4";

On page thirteen, subparagraph 5.8.g.6.B., by striking out "5.4.g.5" and inserting in lieu thereof "5.8.g.5";

On page thirteen, by striking out paragraph 5.8.h.1. in its entirety;

On page fourteen, by striking out paragraph 5.8.h.2. in its entirety;
And by renumbering the remaining paragraphs;

On page fourteen, paragraph 5.8.h.3., by striking out "if the covered person decides not to file for an additional voluntary review of the first level review decision involving an adverse determination";

On page fourteen, paragraph 5.9.a.3., after the words "notices" by striking out the comma;

On page fifteen, subdivision 6.4.b., after "6.4.b." by striking out the period;

On page sixteen, subdivision 6.5.d., after the semicolon by adding the word "and";

On page sixteen, by striking out subdivision 6.5.e. in its entirety;

And by relettering the remaining subdivision;

On page sixteen, by striking out paragraphs 6.5.e.1 and 6.5.e.2 in their entirety;

On page sixteen, subsection 7.2., by striking out "5.1" and inserting in lieu thereof "7.1";

On page eighteen, subparagraph 7.8.a.7.A., after the words "as well as" by inserting the word "a";

On page eighteen, subparagraph 7.8.a.7.A., after the word "reaching" by inserting the word "the";

On page nineteen, subparagraph 7.8.a.7.E., after the word "circumstances" by inserting a comma;
On page nineteen, part 7.8.a.7.F.3., after the word "et" by striking out the period;

On page nineteen, part 7.8.a.7.F.6., after the word "claim" by inserting a comma;

And,

On page twenty, after subparagraph 7.8.b.1.B., by inserting a new subparagraph, designated subparagraph 7.8.b.1.C., to read as follows:

7.8.b.1.C. Include in the English versions of all notices a statement prominently displayed in any applicable non-English language clearly indicating how to access the language services provided by the carrier.

(c) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section four, article sixteen-h, chapter thirty-three of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 1, 2013, relating to the Insurance Commissioner (external review of adverse health insurance determinations, 114 CSR 97), is authorized with the following amendments:

On page one, subsection 2.1., after the word "terminated" by adding period;

On page two, subdivision 2.3.c., after the word "professional" by adding a semicolon;

On page two, subdivision 2.4.c., by striking out "2.4a and 2.4b" and inserting in lieu thereof "2.4.a and 2.4.b";

On page two, subdivision 2.4.d., by striking out "2.4a, 2.4b and 2.4c" and inserting in lieu thereof "2.4.a, 2.4.b and 2.4.c";

On page three, subsection 2.7., after the word "Commissioner" by adding a period;

On page three, subsection 2.12., after the words "Emergency medical condition" by striking out the single quotation mark and inserting in lieu thereof a double quotation mark;

On page four, subsection 2.17., by striking out the words "except as otherwise specifically exempted in this definition" and inserting in lieu thereof the words "but excluding the excepted benefits defined in 42 U.S.C. § 300gg-91 and as otherwise specifically excepted in this rule";

On page eight, subsection 3.1., by striking out the words "A written" and inserting in lieu thereof the words "An issuer shall notify the covered person in writing of the covered person's right to request an external review. Such a written";

On page eight, subdivision 3.1.c., by striking out the words "subsection 15.1" and inserting in lieu thereof the words "section 14";

On page nine, paragraph 3.1.e.1., before the words "would seriously" by striking out the comma;

On page nine, paragraph 3.1.f.1., after the word "life" by striking out the comma and inserting in lieu thereof the words "or health or";

On page ten, subsection 5.3., by striking out the words "expedited review of a grievance involving an adverse
determination” and inserting in lieu thereof the words
“expedited internal review of a grievance involving an
adverse determination pursuant to W. Va. Code of St. R.
§114-96”;

On page ten, subdivision 5.3.a., after the word “Code” by
inserting the word “of”;

On page eleven, subsection 6.2.; after the word
“consideration” by striking out the word “on” and inserting
in lieu thereof the word “of”;

On page twelve, subdivision 6.5.a, by striking out the
words “two business days” and inserting in lieu thereof the
words “one business day”;

On page thirteen, subdivision 6.6.d., by striking out the
word “internal” and inserting in lieu thereof the word
“independent”;

On page thirteen, subsection 6.8., after the words “receipt
of the request for an external review” by inserting the words
“and no later than one business day after making the
decision”;

On page seventeen, subdivision 8.5.b., after “8.5.b.” by
striking out the period;

On page seventeen, subdivision 8.5.c., by striking out
“8.8” and inserting in lieu thereof “8.9”;

On page eighteen, subsection 8.6., after “IRO” by striking
out the comma;

On page eighteen, subdivision 8.6.a., by striking out the
word “dely” and inserting in lieu thereof the word “delay”;
On page nineteen, paragraph 8.9.a.2., after the words "services or treatments" by inserting the words "would not be substantially increased over those of available standard health care services or treatments";

On page twenty, subdivision 8.11.b., by striking out "8.12.d" and inserting in lieu thereof "8.11.d";

On page twenty-one, subdivision 8.11.c., after "8.11.c", by inserting a period;

On page twenty-one, subdivision 8.11.d., after "8.11.d", by inserting a period;

On page twenty, paragraph 8.11.d.1., after "8.11.d.1", by inserting a period;

On page twenty, paragraph 8.11.d.2., after "8.11.d.2", by inserting a period;

On page twenty, paragraph 8.11.d.3., after "8.11.d.3", by inserting a period;

On page twenty-one, paragraph 8.11.d.3., by striking the words "pursuant to subdivision 8.11.a";

On page twenty-two, subsection 8.12., by striking out the word "amount" and inserting in lieu thereof the word "among";

On page twenty-three, subdivision 9.2.f., after the word "parties" by striking out the comma;

On page twenty-three, paragraph 9.2.f.1., after "IRO" by striking out the comma and the words "except that a party that unreasonably refuses to stipulate to limit the record may be taxed by the court for the additional costs involved";
On page twenty-four, subsection 10.2, by striking out the word “as” and inserting in lieu thereof a comma;

On page twenty-five, subdivision 10.4.c., by striking out subdivision 10.4.c. in its entirety;

On page twenty-seven, paragraph 11.4.a.2., after the word “review” by inserting a comma and the words “any known close relative of the covered person,”;

On page twenty-seven, after paragraph 11.4.a.3., by inserting two new paragraphs, designated paragraph, 11.4.a.4. and 11.4.a.5., to read as follows:

11.4.a.4. Any administrator, fiduciary, employee or sponsor of an employee welfare benefit plan as defined in 29 U.S.C. 1002(1), if any, under which the covered person’s request for external review arises;

11.4.a.5. A trade association of group health plans or issuers, or a trade association of health care providers;

And by renumbering the remaining paragraphs;

On page twenty-seven, subdivision 11.4.b., by striking out all of subdivision 11.4.b. and inserting in lieu thereof a new subdivision, designated subdivision 11.4.b., to read as follows:

11.4.b. In determining whether an IRO or a clinical reviewer of the IRO has a material professional, familial or financial conflict of interest for purposes of subdivision 11.4.a, the Commissioner may disregard the mere appearance of a conflict of interest.;

On page twenty-eight, section twelve, by striking out section twelve in its entirety;
And by renumbering the remaining sections;

On page twenty-eight, subsection 13.1., by striking out “13.1.a” and inserting in lieu thereof “12.1.a”

On page twenty-nine, paragraph 13.2.b.2., by striking out “paragraph 13.2.b.2” and inserting in lieu thereof “paragraph 12.2.b.1”;

On page thirty, subsection 15.2, by striking out “15.1” and inserting in lieu thereof “14.1”;

On page thirty, subsection 15.3, by striking out “15.2” and inserting in lieu thereof “14.2”;

And,

On page thirty, after subsection 15.3, by adding a new section, designated section fifteen, to read as follows:

§ 114-97-15. Penalties. Any issuer failing to comply with the requirements of this rule is subject to the penalties prescribed in W. Va. Code §33-3-11.

§64-7-3. Alcohol Beverage Control Commission.

(a) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section ten, article seven, chapter sixty of this code, modified by the Alcohol Beverage Control Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 31, 2013, relating to the Alcohol Beverage Commission (private club licensing, 175 CSR 2), is authorized.

(b) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section sixteen,
article two, chapter sixty of this code, modified by the
Alcohol Beverage Control Commission to meet the
objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on October 31,
2013, relating to the Alcohol Beverage Commission (farm
wineries, 175 CSR 3), is authorized.

(c) The legislative rule filed in the State Register on July
26, 2013, authorized under the authority of section twenty-
three, article eight, chapter sixty of this code, modified by the
Alcohol Beverage Control Commission to meet the
objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on October 31,
2013, relating to the Alcohol Beverage Commission (sale of
wine, 175 CSR 4), is authorized.

(d) The legislative rule filed in the State Register on July
26, 2013, authorized under the authority of section twenty-
two, article sixteen, chapter eleven of this code, modified by
the Alcohol Beverage Control Commission to meet the
objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on October 31,
2013, relating to the Alcohol Beverage Commission
(nonintoxicating beer licensing and operations procedures,
176 CSR 1), is authorized.

§64-7-4. Racing Commission.

The legislative rule filed in the State Register on July 26,
2013, authorized under the authority of section six, article
twenty-three, chapter nineteen of this code, modified by the
Racing Commission to meet the objections of the Legislative
Rule-Making Review Committee and refiled in the State
Register on October 31, 2013, relating to the Racing
Commission (thoroughbred racing, 178 CSR 1), is authorized
with the following amendment:
On page fifteen, subsection 8.5.b., line twenty-two, following the words “stewards shall have authority to” by striking the word “charge”, and inserting in lieu thereof “issue a ruling citing”; and

On page eighteen, subsection 9.2., line six, following the words “health certificates”, by striking the word “Coggins” and inserting in lieu thereof “current negative Coggins test for equine infectious anemia (EIA)”. 
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Member, Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
Joseph M. Winfield
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the Day of , 2014.

[Signature]
Earl Ray Tomblin
Governor
PRESENTED TO THE GOVERNOR

MAR 27 2014

Time 3:00 pm