

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #3 □

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY: W. Va. Code §§ 33-2-10 and 33-20B-6 (a)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 23

TITLE OF RULE BEING AMENDED: Medical Malpractice Loss Experience  
and Loss Expense Annual Reporting Requirements

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.

  
Authorized Signature

\$4.60



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Legal Division

BOB WISE  
Governor

JANE L. CLINE  
Insurance Commissioner

July 25, 2001

**HAND DELIVERED**

Ms. Judy Cooper, Director  
Administrative Law Division  
Office of Secretary of State  
State Capitol  
Charleston, West Virginia 25305

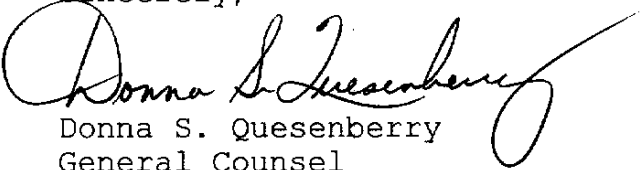
Dear Ms. Cooper:

Enclosed please find for filing one (1) copy of the following:

- 1) Notice of Agency Approval of a Proposed Rule and Consent of Acting Secretary of Tax and Revenue;
- 2) Fiscal Note for Proposed Rule;
- 3) Brief Summary of Rule;
- 4) Statement of Circumstances;
- 5) Legislative Rule-Making Review Committee Questionnaire;
- 6) Agency approved proposed rule entitled "Medical Malpractice Loss Experience and Loss Expense Annual Reporting Requirements" (Title 114, Series 23).

Please contact me if further information is required.

Sincerely,

  
Donna S. Quesenberry  
General Counsel

DSQ/jz  
Enclosures

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

**Rule Title:** Medical Malpractice Loss Experience and Loss Expense Annual Reporting Requirements  
Title 114, Series 23

**Type of Rule:**  X  Legislative      Interpretive      Procedural

**Agency:** Insurance Commissioner

**Address:** Post Office Box 50540  
1124 Smith Street, Greenbrooke Building  
Charleston, West Virginia 25305-0540

**1. Effect of Proposed Rule**

	ANNUAL FISCAL YEAR				
	Increase	Decrease	Current	Next	Thereafter
<b>ESTIMATED TOTAL COST</b>	None	None	None	None	None
<b>PERSONAL SERVICES</b>	None	None	None	None	None
<b>CURRENT EXPENSE</b>	None	None	None	None	None
<b>REPAIRS AND ALTERATIONS</b>	None	None	None	None	None
<b>EQUIPMENT</b>	None	None	None	None	None
<b>OTHER</b>	None	None	None	None	None

**2. Explanation of above estimates:**

The amendment to the existing rule will have no additional fiscal impact on local, state or federal governments.

**3. Objectives of these rules:**

The objective of the rule is to provide adequate information with respect to past and projected loss experience of medical malpractice insurers, thereby enabling the Insurance Commissioner to more effectively analyze and regulate rates.

**Rule Title:** Medical Malpractice Loss Experience and Loss  
Expense Annual Reporting Requirements  
Title 114, Series 23

**4. Explanation of Overall Economic Impact of Proposed Rule.**

**A. Economic Impact on State Government.**

None

**B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.**

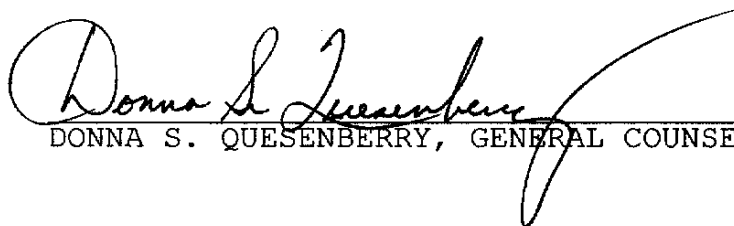
None

**C. Economic Impact on Citizens/Public at Large.**

None

**Date:** July 25, 2001

**Signature of Agency Head or Authorized Representative**

  
\_\_\_\_\_  
DONNA S. QUESENBERY, GENERAL COUNSEL

Insurance Commissioner  
Legislative Rule  
Title 114, Series 23

**MEDICAL MALPRACTICE LOSS EXPERIENCE  
AND LOSS EXPENSE ANNUAL REPORTING REQUIREMENTS**

**TITLE 114, SERIES 23**

**BRIEF SUMMARY OF RULE**

West Virginia Code Section 33-20B-6(a) requires the Insurance Commissioner to promulgate a rule which establishes "procedures for the fair and appropriate evaluation and determination of the past loss experience and prospective or projected loss experience of insurers within and outside this state, actual past expenses incurred in the state and demonstrable prospective or projected expenses applicable to this state." This proposed rule amends the "Annual Loss Experience and Loss Experience Report Form" contained in the current rule. The amended language requests from insurers information with regard to actual expenses incurred per policy type, i.e. actual claims paid, legal fees paid and administrative costs, as well as audited financial statements. This additional information will enable the Commissioner to more adequately evaluate past and projected loss experience, and thereby more effectively regulate rates.

Insurance Commissioner  
Legislative Rule  
Title 114, Series 23

**MEDICAL MALPRACTICE LOSS EXPERIENCE  
AND LOSS EXPENSE ANNUAL REPORTING REQUIREMENTS**

**TITLE 114, SERIES 23**

**STATEMENT OF CIRCUMSTANCES**

West Virginia Code Section 33-20B-6(a) requires the Insurance Commissioner to promulgate a rule which establishes "procedures for the fair and appropriate evaluation and determination of the past loss experience and prospective or projected loss experience of insurers within and outside this state, actual past expenses incurred in the state and demonstrable prospective or projected expenses applicable to this state." This proposed rule amends the "Annual Loss Experience and Loss Experience Report Form" contained in the current rule. The amended language requests from insurers information with regard to actual expenses incurred per policy type, i.e. actual claims paid, legal fees paid and administrative costs, as well as audited financial statements. This additional information will enable the Commissioner to more adequately evaluate past and projected loss experience, and thereby more effectively regulate rates.

## 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 25, 2001

**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:** MEDICAL MALPRACTICE LOSS EXPERIENCE  
AND LOSS EXPENSE ANNUAL REPORTING  
REQUIREMENTS (TITLE 114, SERIES 23)

**1. Authorizing statute(s) citation:**

West Virginia Code §§ 33-2-10 and 33-20B-6(a)

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

June 6, 2001

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

None

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

Public comment period ended July 6, 2001.

**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)**

July 25, 2001

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

Donna S. Quesenberry, General Counsel  
West Virginia Insurance Commission  
Legal Division  
P.O. Box 50540  
Charleston, WV 25305-0540  
Phone: (304) 558-0401  
Fax: (304) 558-1362  
E-mail: quosed@wvnm.wvnet.edu

- 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)**

Not applicable

- 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:**

- 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.**

Not applicable

- b. Date of hearing or comment period:**

Not applicable

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

Not applicable

- d. Attach findings and determinations and reasons:**

Not applicable



**114CSR23**

**WEST VIRGINIA LEGISLATIVE RULE  
INSURANCE COMMISSIONER**

**SERIES 23**

**MEDICAL MALPRACTICE LOSS EXPERIENCE  
AND LOSS EXPENSE ANNUAL REPORTING REQUIREMENTS**

Section

- 114-23-1. General.
- 114-23-2. Definitions.
- 114-23-3. Insurers Subject to Reporting Requirements.
- 114-23-4. Filing Deadline; Failure to Submit Information.
- 114-23-5. Information Required to Be Reported.
- 114-23-6. Evaluation By Commissioner.
- 114-23-7. Severability.

FILED

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WEST VIRGINIA LEGISLATIVE RULE  
INSURANCE COMMISSIONER

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 23

MEDICAL MALPRACTICE LOSS EXPERIENCE  
AND LOSS EXPENSE ANNUAL REPORTING REQUIREMENTS

**§ 114-23-1. General.**

1.1. Scope. -- This legislative rule establishes guidelines and procedures under which each insurer providing five percent (5%) or more of the medical malpractice insurance coverage in West Virginia shall report to the Insurance Commissioner on an annual basis certain specified information concerning loss experience and loss expense in regard to such medical malpractice insurance coverage.

1.2. Authority. -- W. Va. Code § 33-20B-6(a) and § 33-2-10.

1.3. Filing Date. -- ~~April 4, 1988.~~

1.4. Effective Date. -- ~~April 4, 1988.~~

**§ 114-23-2. Definitions.**

As used in this legislative rule:

2.1. Annual financial statement. Shall mean the financial statement required to be filed annually with the Commissioner pursuant to W. Va. Code § 33-3-14 and § 33-4-14.

2.2. Commissioner. Shall mean the Insurance Commissioner of the state of West Virginia.

2.3. Insurer. Shall mean the insurance company licensed by the Commissioner and authorized to write medical malpractice insurance coverage in the state of West Virginia.

**§ 114-23-3. Insurers Subject To Reporting Requirements.**

3.1. Insurers subject to annual reporting requirements. This rule shall apply to every insurer which provided five percent (5%) or more of the medical malpractice insurance coverage in West Virginia during the preceding calendar year.

3.2. Notification by Commissioner. The Commissioner shall annually, on or before May 1, notify in writing those insurers which he has determined provided five percent (5%) or more of the

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medical malpractice insurance coverage in West Virginia during the preceding calendar year of their obligation to report to the Commissioner the information specified in section 5 of this rule.

3.3. Method of determination. The Commissioner's determination pursuant to subsection 3.2 shall be based upon a comparison of every insurer's gross direct written malpractice premiums in West Virginia during the preceding calendar year to the total gross direct written malpractice premium in West Virginia for that calendar year.

**§ 114-23-4. Filing Deadline; Failure To Submit Information.**

4.1. Filing deadline. Insurers shall submit all information specified in section 5 of this rule to the Commissioner on or before August 1 immediately succeeding notification by the Commissioner pursuant to subsection 3.2.

4.2. Failure to submit information. Pursuant to West Virginia Code § 33-20B-6(b), any insurer which fails to timely submit any and all information specified in section 5 of this rule to the Commissioner shall be fined ten thousand dollars (\$10,000.00) for each of the first five (5) such failures per year and shall be fined one hundred thousand dollars (\$100,000.00) for the sixth (6th) and each subsequent such failure per year.

**§ 114-23-5. Information Required To Be Reported.**

5.1. Information required to be reported. The information required to be reported to the Commissioner shall be that specified in the Annual Loss Experience and Loss Expense Reporting Form, attached to and made a part of this rule as Exhibit A.

5.2. Information by individual coverage classifications. A separate Annual Loss Experience and Loss Expense Reporting Form must be filed for each and every individual coverage classification written by the insurer in West Virginia.

**§ 114-23-6. Evaluation By Commissioner.**

6.1. Evaluation by Commissioner. The Commissioner shall evaluate the information reported pursuant to section 5 of the rule in order to determine whether the filing insurers have fairly and accurately determined the loss experience and loss expense data in the filing.

**§ 114-23-7. Severability.**

7.1. Severability. If any provision of this legislative rule is held invalid, the remainder of the rule shall not be affected thereby.

**Exhibit A**

**Annual Loss Experience and Loss Expense Reporting Form**

(Note: Attach Additional Sheets For Answers When Necessary)

1. Company Name: \_\_\_\_\_  
  
If part of a group, specify group name:  
  
\_\_\_\_\_
2. Coverage Classification: \_\_\_\_\_
3. Provide, on a West Virginia basis and on a countrywide basis, the following information by twelve-month accident year for the preceding ninety-six months:
  - a. paid losses;
  - b. accumulated paid losses;
  - c. paid loss adjustment expenses; and,
  - d. incurred but not reported losses.
4. Provide, on a West Virginia basis and on a countrywide basis, the calculation of loss development factors by twelve-month accident year for the preceding ninety-six months for the following:
  - a. paid losses;
  - b. accumulated paid losses;
  - c. paid loss adjustment expenses; and,
  - d. incurred but not reported losses.
5. Provide, on a West Virginia basis and a countrywide basis, the ratio of accumulated paid losses to earned premiums by twelve-month accident year for the preceding ninety-six months.
6. Provide, on a West Virginia basis and a countrywide basis, the number of policies in force and the paid losses per policy by twelve-month accident year for the preceding ninety-six months.
7. Provide a comparison of allocated West Virginia operating expenses and actual West Virginia operating expenses by twelve-month accident year for the preceding ninety-six months.

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8. Provide, on a West Virginia basis and on a countrywide basis, a linear trend analysis which shows the indicated projected trended development factors for paid losses, accumulated paid loss, paid loss adjustment expenses and incurred but not reported losses. Provide the R squared results of the linear models.
9. Provide the methodology by which the credibility of West Virginia data in relationship to countrywide data is weighted in calculating an indicated percentage of premium rate increase by twelve-month accident year for the preceding ninety-six months. Provide formulas used in the methodology and a narrative explanation and justification of use of the particular methodology.
10. Provide the following information with regard to actual expenses:
  - a. Actual paid claims by policy type by year (please separate underlying tort payments from bad faith, unfair claims practices and other extra contractual payments).
  - b. Actual legal fees by policy type by year.
  - c. Actual administrative costs paid by policy type by year.
11. Provide audited financial statements inclusive of income statements and balance sheets, statements of cash flow and footnotes to financials.

The above information is correct to the best of my knowledge and belief.

\_\_\_\_\_  
Name (type or print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Signature