

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

Form #2

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2002 MAY 29 P 2:29

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Insurance Commission TITLE NUMBER: 114

RULE TYPE: Legislative CITE AUTHORITY: W.Va. Code Section 33-2-10 & 33-20D-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 30

TITLE OF RULE BEING AMENDED: "Tail" Malpractice Insurance Covering
Certain Medical and Allied Health Care Providers

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

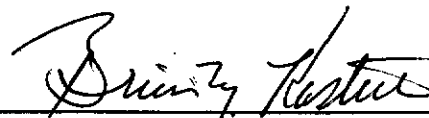
IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 1, 2002 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Vincent J. King, General Counsel

Offices of the Insurance
Commissioner
P.O. Box 50540

Charleston WV 25305-0540

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



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SCANNED

Department of Tax and Revenue
Agency Questionnaire

Re: Administrative Rule to be Filed

"TAIL" MALPRACTICE INSURANCE COVERING CERTAIN
MEDICAL AND ALLIED HEALTH CARE PROVIDERS

TITLE 114, SERIES 30

Question 1: Are regulations required?

Yes, see West Virginia Code § 33-20D-4

Question 2: Is the rule you are proposing controversial? If yes, what are the pros and the cons?

No. Change in rule is to be consistent with recent change in statute which was passed with little discussion.

Question 3: Is the rule you are proposing a copy of another state's rule? A model rule? Custom-drafted?

Custom drafted

Question 4: What are the really important things you think the Secretary of Tax and Revenue should know about this rule and the issues that surround it?

Prior statute stated, in the event of default on amortized portion of tail premium, the balance becomes immediately due and payable and coverage is forfeited. The prior rule, which was apparently promulgated to address the harshness of the statute, said that in the event of default, the balance became immediately due and payable, and absent full payment, the policy did not cease, but was reduced pro-rata. The latter first appeared to be more fair but industry correctly pointed out that pro-rata was actually disproportionate because lower limits cost significantly more in premium due to the duty to defend, etc. Accordingly, the statute was changed to say that, in the event of default on the amortized payment, the limits would be determined in accordance with a plan submitted by the carrier and approved by the Commission. This change is to make the rule consistent.

Insurance Commissioner
Legislative Rule
Title 114, Series 30

**"TAIL" MALPRACTICE INSURANCE COVERING
CERTAIN MEDICAL AND ALLIED HEALTH CARE PROVIDERS**

TITLE 114, SERIES 30

BRIEF SUMMARY OF RULE

Determination of applicable limits in the event of default on
amortized portion of tail premium.

Insurance Commissioner
Legislative Rule
Title 114, Series 30

**"TAIL" MALPRACTICE INSURANCE COVERING
CERTAIN MEDICAL AND ALLIED HEALTH CARE PROVIDERS**

TITLE 114, SERIES 30

STATEMENT OF CIRCUMSTANCES

Inconsistency between existing statute (recently amended) and rule.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: "Tail" Malpractice Insurance Covering Certain
Medical and Allied Health Care Providers

Title 114, Series 30

Type of Rule: XX 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
ESTIMATED TOTAL COST	Negligible	Not-applicable	None	Negligible	Negligible
PERSONAL SERVICES	Negligible	Not-applicable	None	Negligible	Negligible
CURRENT EXPENSE	None	None	None	None	None
REPAIRS AND ALTERATIONS	None	None	None	None	None
EQUIPMENT	None	None	None	None	None
OTHER	None	None	None	None	None

2. Explanation of above estimates:

This will involve review of a brief one page filing, presumably on a one time basis, but with possible occasional modification, from medical malpractice carriers actively writing (presently number only a few). Potential cost would be limited to personal services by salaried employees who's job it already is to review any and all filings.

Rule Title: "Tail" Malpractice Insurance Covering Certain
Medical and Allied Health Care Providers
Title 114, Series 30

3. Objectives of these rules:

To resolve conflict between existing (recently amended) statute and rule with respect to determination of limits upon default on amortized tail premium payment.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Negligible - minimal personal services for review only

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

Insurance carriers actively writing medical malpractice coverage will need to make a one time filing setting forth their proposed plan for determination of limits in the event of default on amortized tail premium payment.

C. Economic Impact on Citizens/Public at Large.

None

Date: 5/29/02

Signature of Agency Head or Authorized Representative



VINCENT J. KING
GENERAL COUNSEL

114CSR30
WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 30
"TAIL" MALPRACTICE INSURANCE COVERING
CERTAIN MEDICAL AND ALLIED HEALTH CARE PROVIDERS

Section.

- 114-30-1. General.
- 114-30-2. Definitions
- 114-30-3. Applicability.
- 114-30-4. "Tail" Insurance Offer Mandated.
- 114-30-5. Premium Payment Amortization.
- 114-30-6. Premium Due Dates; Acceleration of Premium Due Upon Payment Default.
- 114-30-7. Penalty for Insurer's Non-Compliance.
- 114-30-8. Separability.

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INSURANCE COMMISSIONER

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SERIES 30

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"TAIL" MALPRACTICE INSURANCE COVERING
CERTAIN MEDICAL AND ALLIED HEALTH CARE PROVIDERS
WEST VIRGINIA
SECRETARY OF STATE

§114-30-1. General.

1.1. Scope. -- This legislative rule provides for premium payment amortization, under certain circumstances specified in the rule, for "tail" professional malpractice insurance covering medical physicians, osteopathic physicians, podiatrists, chiropractors, dentists, midwives and nurse practitioners and hospitals.

1.2. Authority. -- W. Va. Code §§33-20D-4, 33-2-10.

1.3. Filing Date. -- ~~May 19, 1992.~~

1.4. Effective Date. -- ~~May 19, 1992.~~

§114-30-2. Definitions.

As used in this legislative rule:

2.1. "'Claims made' malpractice insurance" means a policy which covers claims which are reported during the policy period, meet the provisions specified by the policy, and are for an incident which occurred during the policy period, or occurred prior to the policy period, as is specified by the policy.

2.2. "Commissioner" means the Insurance Commissioner of the State of West Virginia.

2.3. "'Tail' insurance" means insurance which covers a professional insured once a "claims made" malpractice insurance policy is cancelled, not renewed or terminated and covers claims made after such cancellation or termination for acts occurring during the period the prior malpractice insurance was in effect.

§114-30-3. Applicability.

This rule applies to premium payment amortization for "tail" malpractice insurance offered to the medical and allied health care providers enumerated in subsection 1.1 herein whose prior "claims made" malpractice insurance policy had been in effect for at least sixty (60) days: Provided,

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That each quarterly amortized premium paid pursuant to this rule shall not be less than seven hundred fifty dollars (\$750.00).

§114-30-4. "Tail" Insurance Offer Mandated.

4.1. Upon cancellation, nonrenewal or termination of any "claims made" professional malpractice insurance policy to which this rule is applicable as set forth in section 3 herein, the insurer shall offer to the insured "tail" insurance coverage.

4.2. Such offer of "tail" insurance shall expire forty-five (45) days after the cancellation, nonrenewal, expiration or other termination of the insured's "claims made" professional malpractice insurance policy, unless the "tail" insurance offer is accepted sooner, in writing, by the insured.

§114-30-5. Premium Payment Amortization.

5.1. Upon cancellation, nonrenewal or termination of any "claims made" professional malpractice insurance policy to which this rule is applicable, the insurer shall offer to any eligible professional who is licensed and practicing in the state of West Virginia, or who, prior to retirement, last practiced in the state of West Virginia, the opportunity to amortize the payment of quarterly premiums for "tail" insurance over twelve (12), twenty-four (24) or thirty-six (36) months.

5.2. Such quarterly premium payments for "tail" insurance shall be amortized at a per annum rate of interest equal to two (2) percentage points above the prime interest rate reported in the **Wall Street Journal** on the date when the insurer or its agent receives the insured's written request to purchase "tail" insurance, or on the next publication date of the **Wall Street Journal** following the effective date of the "tail" insurance policy if the **Wall Street Journal** is not published on the date when the insurer or its agent receives the insured's written request to purchase "tail" insurance.

5.3. The insured shall not be entitled to pay amortized premiums pursuant to this rule unless each quarterly premium payment, as computed applying the amortization rate set forth in subsection 5.2, equals at least seven hundred fifty dollars (\$750.00).

§114-30-6. Premium Due Dates; Acceleration of Premium Due Upon Payment Default.

6.1. The first quarterly payment due for "tail" insurance pursuant to this rule shall be payable contemporaneously with the issuance of the "tail" insurance policy. Subsequent payments shall be due and payable quarterly thereafter.

6.2. ~~Upon~~ In the event of the insured's default in making a premium payment when due, the ~~entire balance of the premium for "tail" insurance coverage shall immediately be due and payable~~

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in full: insurer shall notify the insured by certified mail that the entire balance is due and payable in full within 30 days of receipt of said notice. If the entire balance is not then timely paid in full, the "tail" insurance coverage shall not terminate, but the limit of liability will be reduced, pro rata, based on the amount of the total premium paid for the extended reporting coverage: limits shall be determined in accordance with the plan filed by the carrier and approved by the commissioner.

§114-30-7. Penalty for Insurer's Non-Compliance.

Any professional malpractice insurer subject to the provisions of this rule that fails to offer "tail" insurance to an eligible insured, or that violates in any way the provisions of article 20D, chapter 33 of the West Virginia code, shall be assessed a penalty by the commissioner equal to the total amount of premium due for the "tail" insurance that the insurer is required to offer.

§114-30-8. Separability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions to other persons or circumstances shall not be affected thereby.