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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

2002 OCT 24 A 9: 32

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October 23, 2002

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Vincent J. King
Insurance Commissioner
Capitol Complex
Box 50540

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **"Tail" Malpractice Insurance Covering Certain Medical and Allied Health Care Providers, 114CSR30**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Insurance Commission

Subject: "Tail" Malpractice Insurance Covering Certain Medical and Allied Health Care Providers, 114 CSR 30

Date: October 1, 2002

Staff Counsel: Connie A. Bowling

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2002 OCT -3 A 9:46

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PERTINENT DATES

Filed for public comment: May 29, 2002

Public comment period ended: July 1, 2002

Filed following public comment period: July 26, 2002

Filed LRMRC: July 26, 2002

Filed as emergency: N/A

Fiscal Impact: None

ABSTRACT

This rule amends the existing rule governing "tail" malpractice insurance coverage to conform to the 2002 amendments to WVC 33-20D-1 et seq., which deleted provisions automatically terminating tail coverage upon the insured's default in paying premiums and, instead, required the insurer to submit to the Commissioner for approval a plan for "partial limits" in the event of a default.

The amended rule requires the insurer to notify the insured of default by certified mail within 30 days, at which time the insured would have the option of paying the entire balance due. If the insured still fails to pay the amount due, the insurer is permitted to reduce the amount of tail coverage in accordance with the "partial limits" plan approved by the Insurance Commissioner.

The rule also adds to the list of those to whom it is applicable hospitals which have tail coverage.

AUTHORITY

Statutory authority:

W. Va. Code § 33-2-10:

The commissioner is authorized to promulgate and adopt such rules and regulations relating to insurance as are necessary to discharge his duties and exercise his powers and to effectuate the provisions of this chapter and to protect and safeguard the interests of policyholders and the public of this State.

W. Va. Code § 33-20D-4:

(a) Pursuant to article three, chapter twenty-nine-a of this code, the insurance commissioner shall promulgate legislative rules establishing procedures necessary to effectuate the provisions of this article.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

None.