

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

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OFFICE OF THE SECRETARY OF STATE  
STATE OF WEST VIRGINIA

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY Insurance Commission NUMBER: 114

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: \_\_\_\_\_

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 287

SECTION 64-7-1(f), PASSED ON March 7, 2003

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE  
FOLLOWING DATE: April 3, 2003

  
\_\_\_\_\_  
Authorized Signature

PROMULGATION HISTORY

WEST VIRGINIA INSURANCE COMMISSION

TITLE

"TAIL" MALPRACTICE INSURANCE COVERING  
CERTAIN MEDICAL AND ALLIED HEALTH CARE PROVIDERS  
TITLE 114, SERIES 30

5/29/02	Notice of Comment Period Filed
7/01/02	Last Date Comments Were Received
7/26/02	Agency Approved Legislative Rule Filed
10/22/02	Date Reviewed by Legislative Rule-Making Review Committee
4/03/03	Filing Date
4/03/03	Effective Date

**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.

114CSR30  
WEST VIRGINIA LEGISLATIVE RULE  
INSURANCE COMMISSIONER

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OFFICE OF THE CLERK  
WEST VIRGINIA LEGISLATURE

SERIES 30

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

**§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 nurse practitioners and hospitals.

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

1.3. Filing Date. -- April 3, 2003.

1.4. Effective Date. -- April 3, 2003.

**§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, 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. In the event of the insured's default in making a premium payment when due, the 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 timely paid in full, the "tail" insurance 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.