

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Insurance Commissioner TITLE NUMBER: 114

RULE TYPE: Legislative; CITE AUTHORITY West Virginia Code §§ 33-2-10, 33-20D-4

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 30

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

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 August 8, 1991 AT 4:30 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

B. Keith Huffman
General Counsel
West Virginia Insurance Commissioner
2019 Washington Street, East
Charleston, WV 25305

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

Hanley C. Clark
Hanley C. Clark
Insurance Commissioner

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

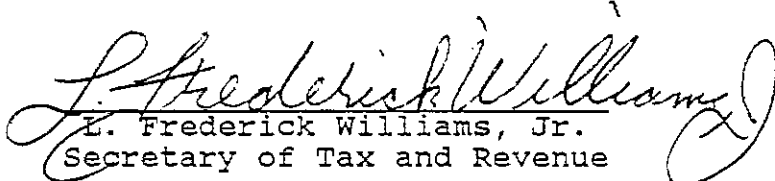
3.10

CONSENT TO PROPOSAL OF RULE

To Whom It May Concern:

Pursuant to West Virginia Code §5F-2-2(a)(12), the undersigned hereby grants consent to the proposal of the following rule proposed by the Insurance Commissioner of the State of West Virginia: Title 114, Series 30, relating to "Tail" Malpractice Insurance Covering Certain Medical and Allied Health Care Providers.

Signed this 2nd day of July, 1991.


L. Frederick Williams, Jr.
Secretary of Tax and Revenue

FISCAL NOTE FOR PROPOSED RULES

NOV 19 11:42

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

Type of Rule: Legislative Interpretive Procedural

Agency: Insurance Commissioner Address: 2019 Washington Street, East,
Charleston, West Virginia 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	NONE				

Personal Services

Current Expense

Repairs & Alterations NONE

Equipment

Other

2. Explanation of above estimates:

The rule will have no fiscal impact upon state, local or federal government.

3. Objectives of these rules:

The objectives of these rules are: (1) to require professional malpractice insurers to offer "tail" malpractice insurance to medical doctors, osteopathic physicians, podiatrists, chiropractors, dentists, midwives and nurse practitioners upon cancellation, nonrenewal or termination of their "claims made" malpractice insurance that had been in effect for at least 60 days; and (2) to provide such professionals an opportunity to amortize the payment of premiums for "tail" insurance over not more than 36 months, so long as each quarterly premium payment equals at least \$750.00.

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.

The rule will afford the medical and allied health care providers enumerated in it the opportunity to pay premiums for "tail" malpractice insurance on the installment plan, by amortizing those premiums over no more than 36 months.

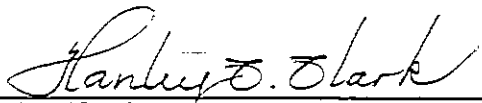
The insurance industry should suffer no unfavorable impact of this rule, which provides for amortization of "tail" malpractice insurance premiums at an interest rate which is fair to the affected insurers.

C. Economic Impact on Citizens/Public at Large.

NONE

Date: July 9, 1991

Signature of Agency Head or Authorized Representative



Hanley C. Clark
Insurance Commissioner

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: OFFICE OF THE INSURANCE COMMISSIONER

DATE: July 9, 1991

EMERGENCY RULE TITLE: "Tail" Malpractice Insurance Covering
Certain Medical and Allied Health Care
Providers

(Title 114, Series 30)

1. Date of filing: July 9, 1991

2. Statutory authority for promulgating the emergency rule:
West Virginia Code §§ 33-20D-4(a), 33-2-10

3. Date of filing of proposed legislative rule: July 9, 1991

4. Does the emergency rule adopt new language or does it amend
or repeal a current legislative rule?
Adopts new language.

5. Has the same or similar emergency rule previously been
filed and expired?
No

6. State, with particularity, those facts and circumstances
which make the emergency rule necessary for the immediate
preservation of public peace, health, safety or welfare.
See next question.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

West Virginia Code § 33-20D-4(a) as created by H. B. 2789
requires that these rules shall be promulgated as emergency
rules within forty-five days of the June 7, 1991 effective
date of new Article 20D, Chapter 33 of the West Virginia
Code.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See previous question.

Insurance Commissioner
Leg. Rule 33-20D
Title 114
EMERGENCY

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

Chapter 33-20D, Series 30

BRIEF SUMMARY

This proposed emergency rule implements the provisions of newly enacted Article 20D, Chapter 33 of the West Virginia Code which was created by House Bill 2789 [effective date June 7, 1991]. The rule is to provide for the amortization of premium payments for "tail" malpractice insurance for medical doctors, osteopathic physicians, podiatrists, chiropractors, dentists, midwives and nurse practitioners. The rule provides these professionals an opportunity to amortize the payment of premiums for "tail" insurance for a period of not more than thirty-six months, in quarterly payments that cannot be less than \$750 per quarter.

EMERGENCY

WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

CHAPTER 33-20D
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

EMERGENCY

WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

CHAPTER 33-20D
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 and nurse practitioners.

1.2 Authority -- West Virginia Code §§ 33-20D-4, 33-2-10.

1.3 Filing Date --

1.4 Effective Date --

§114-30-2. Definitions

As used in this legislative rule:

"'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.

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

"'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 Section 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 (\$750.00) dollars.

§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, twenty-four or thirty-six 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 "tail" insurance policy becomes effective, 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 effective date of the policy.

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 (\$750.00) dollars.

Insurance Commissioner
Leg. Rule 33-20D
Series 30, Sec. 7
EMERGENCY

§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 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 in full. If the entire premium is not then paid in full, the "tail" insurance coverage shall terminate.

§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.