

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

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

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

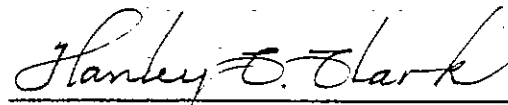
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

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

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.



Hanley C. Clark
Insurance Commissioner

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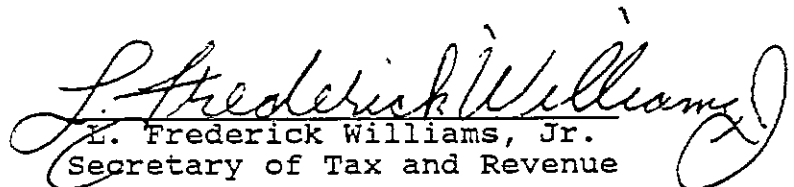
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

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

Type of Rule: X Legislative Interpretive Procedural

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

1. Effect of Proposed Rule	ANNUAL		Current	FISCAL YEAR	
	Increase	Decrease		Next	Thereafter

Estimated Total Cost	NONE				
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Personal Services

Current Expense

Repairs & Alterations	NONE				
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Equipment

Other

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 OFFICE OF WEST VIRGINIA
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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.

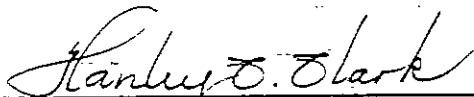
The insurance industry should suffer no unfavorable impact of this rule, which provides for amortization of "tail" malpractice insurance premiums at an interest rate which is fair to the affected insurers.

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

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

DATE: August 12, 1991
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: OFFICE OF THE INSURANCE COMMISSIONER

LEGISLATIVE RULE TITLE: "Tail" Malpractice Insurance Covering
Certain Medical and Allied Health Care Providers
(Series 30)

1. Authorizing statute(s) citation West Virginia Code
SS 33-20D-4, 33-2-10

2. a. Date filed in State Register with Notice of Hearing:
July 9, 1991

b. What other notice, including advertising, did you give
of the hearing?
None

c. Date of hearing(s): The public comment period ended
on August 8, 1991 at 4:30 p.m.

d. Attach list of persons who appeared at hearing,
comments received, amendments, reasons for amendments.
Attached X No comments received _____

e. Date you filed in State Register the agency approved
proposed Legislative Rule following public hearing:
(be exact)
August 12, 1991

f. Name and phone number of agency person to contact for
additional information:
B. Keith Huffman
General Counsel
(304) 348-0401

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: _____ 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:

Attached _____ Not applicable _____

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: OFFICE OF THE INSURANCE COMMISSIONER
DATE: August 12, 1991

LEGISLATIVE RULE TITLE: "Tail" Malpractice Insurance Covering
Certain Medical and Allied Health Care
Providers (Series 30)

DESCRIPTION OF RULE

This rule provides for the amortization of premium payments for "tail" malpractice insurance for medical doctors, osteopathic physicians, podiatrists, chiropractors, dentists, midwives and nurse practitioners. "Tail" insurance is that malpractice insurance which covers the above-named professionals for additional reporting periods once a "claims made" malpractice insurance policy is cancelled, not renewed or terminated. "Tail" insurance covers claims made after such termination or cancellation for acts occurring during the period when the prior "claims made" malpractice insurance was in effect. The rule provides these professionals an opportunity to amortize the payment of "tail" malpractice insurance premiums over a period not to exceed thirty-six months, in quarterly payments that cannot be less than \$750 each.



STATE OF WEST VIRGINIA
Offices of the Insurance Commissioner

Legal Division

GASTON CAPERTON
Governor

HANLEY C. CLARK
Insurance Commissioner

August 12, 1991

HAND DELIVERED

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

FILED
1991 AUG 12 PM 4:27
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Dear Ms. Cooper:

Enclosed please find for filing "Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee," "Description of Rule," "Legislative Rule-Making Review Committee Questionnaire" and a copy of the proposed rule entitled "'Tail' Malpractice Insurance Covering Certain Medical and Allied Health Care Providers" for Series 30, Title 114.

Very truly yours,

Linda Gay
Linda Gay
Associate General Counsel

LG/iw
Enclosures

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

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1991 AUG 12 PM 4: 28

WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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"-insuree policy becomes effective~~ 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 effective-date-of-the policy- date when the insurer or its agent receives the insured's written request to purchase "tail" insurance.

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

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.

§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.

ATTACHMENT TO QUESTION 2(d):

Two separate but virtually identical sets of comments concerning this proposed rule were received from Stephen L. Brown, who submitted the comments on behalf of McDonough Caperton Insurance Group and the West Virginia Hospital Insurance Company (WVHIC). Mr. Brown's comments are attached hereto and incorporated herein by reference.

The Insurance Commissioner has amended the proposed rule to implement Mr. Brown's suggestion that the amortization rate for quarterly "tail" malpractice insurance premiums be determined prior to the effective date of the "tail" insurance policy. To implement this suggested change, in lines 4 and 5 of Section 5.2 on page 2 of the proposed rule, the words "the 'tail' insurance policy becomes effective" have been struck through and the words "the insurer or its agent receives the insured's written request to purchase 'tail' insurance" have been inserted in their place and underscored. In lines 9 and 10 of Section 5.2 on page 2 of the rule, the words "effective date of the policy" have been struck through and the words "date when the insurer or its agent receives the insured's written request to purchase 'tail' insurance" have been inserted in their place and underscored.

In his written comments, Mr. Brown also recommended that the proposed rule be amended to specify a thirty-day time period for payment by the insured of the entire premium due

after a default in payment of a quarterly premium. However, the Insurance Commissioner believes that the inclusion of such a thirty-day time period in Section 6.2 on page 3 of the proposed rule would be contrary to the express language contained in the third sentence of West Virginia Code § 33-20D-3(c), which states: "Upon default in making a payment when due, tail coverage shall terminate, and the unpaid portion of the amortized premium shall be immediately due and payable in full." (emphasis added). Therefore, the Insurance Commissioner has declined to amend the proposed rule to make this change suggested by Mr. Brown. The Commissioner likewise has declined to add the words "as of the effective date of the 'tail' insurance and all premiums paid by the insured be returned within 30 days" to the end of Section 6.2 of the proposed rule, due to the language of West Virginia Code § 33-20D-3(c).

McDonough
Caperton
Insurance
Group


August 8, 1991

RECEIVED

AUG 8 1991

WEST VIRGINIA
INSURANCE COMMISSION

The Honorable Hanley C. Clark
Insurance Commissioner
State of West Virginia
2019 Washington Street East
Charleston, WV 25305

Re: "Tail" Malpractice Insurance

Dear Mr. Clark:

As managing general agents of the CNA professional liability program for physicians and surgeons, and as state administrator of the dental professional liability program for CNA, McDonough Caperton has reviewed the Emergency Rule pertaining to "tail" malpractice insurance and has the following observations:

1) A request for a "tail" insurance quotation is generally made prior to the actual date of cancellation, nonrenewal, or termination. Subsection 5-2 of 14-30-5 (Premium Payment Amortization) indicates that the "quarterly premium payment 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...."

Should this be the case, the insurer will be unable to give quotations until after the actual cancellation, nonrenewal or termination takes place, thereby providing a disservice to the insured in being able to determine the actual cost of "tail insurance" prior to making a decision on its need. Further, the change in interest rate from the request date to the effective date may result in a quarterly amortized premium that does not equal \$750 quarterly payment for a 36 month, 24 months, or a 12 month period. This creates an uncertainty for both the insured and insurer.

Subsection 5.2 should be changed from "... the prime interest rate reported in the 'Wall Street Journal' on the date when the 'tail' insurance policy becomes effective...." to the "... date when the 'tail' insurance is requested...."

McDonough Caperton Insurance Group

One Hillcrest Dr. E., P.O. Box 3186, Charleston, WV 25332-3186 (304) 346-0611 Fax: (304) 347-0697

2) Subsection 6.2 of 114-30-6 (Premium Due Dates: Acceleration of Premium Due upon Payment Default) indicates, "If the entire premium is not then paid in full, the 'tail' insurance coverage shall terminate."

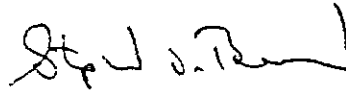
To provide clarity, a time period for payment of the entire amount due after default should be included. This time period should be 30 days from the date of notice by the insurer to the insured of the default and full amount due.

It is also our suggestion that the following additional language be added to the end of the above quoted statement (Subsection 6.2): "as of the effective date of the 'tail' insurance and all premiums paid by the insured be returned within 30 days."

The need for this addition is to add some definitive language for the period of coverage provided in the event of default in payment by the insured.

We hope these comments have been helpful and if we can provide any additional information please let us know.

Very truly yours,



Stephen L. Brown
Senior Vice President
Professional Liability Services

SLB/cmh

Enclosure



WEST VIRGINIA HOSPITAL INSURANCE COMPANY
600 D Street P.O. Box 3906
S. Charleston, WV 25303 Charleston, WV 25339
304/347-1546

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August 8, 1991

AUG 8 1991

WEST VIRGINIA
INSURANCE COMMISSION

The Honorable Hanley C. Clark
Insurance Commissioner
State of West Virginia
2019 Washington Street East
Charleston, WV 25305

Re: "Tail" Malpractice Insurance

Dear Mr. Clark:

We have reviewed the Emergency Rule pertaining to "tail" malpractice insurance and have the following observations:

1) The West Virginia Hospital Insurance Company (WVHIC) currently provides professional malpractice insurance for hospitals, but in so doing covers individuals, including medical physicians, osteopathic physicians, midwives and nurse practitioners. In the event that the coverage under a WVHIC policy for a medical physician, osteopathic physician, midwife or nurse practitioner is terminated but the hospital's policy is not canceled, nonrenewed or terminated, are the terms of this statute and rule applicable to WVHIC?

It is WVHIC's belief that the statute specifically calls for the cancellation, nonrenewal or termination of the insurance policy (emphasis added) for activation of its (statute's) provisions.

Should the statute be applicable to WVHIC, we have the following observations:

2) A request for a "tail" insurance quotation is generally made prior to the actual date of cancellation, nonrenewal, or termination. Subsection 5-2 of 114-30-5 (Premium Payment Amortization) indicates that the "quarterly premium payment 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...."

Should this be the case, the insurer will be unable to give quotations until after the actual cancellation, nonrenewal or termination takes; thereby providing a disservice to the insured in being able to determine the actual cost of "tail insurance" prior to making a decision on its need. Further, the change in interest rate from the request date to the effective date may result in a quarterly amortized premium that does not equal \$750 quarterly payment for a 36 month, 24 months, or a 12 month period. This creates an uncertainty for both the insured and insurer.

The Subsection 5.2 should be changed from "... the prime interest rate reported in the 'Wall Street Journal' on the date when the 'tail' insurance policy becomes effective...." to the "... date when the 'tail' insurance is requested...."

3) Subsection 6.2 of 114-30-6 (Premium Due Dates: Acceleration of Premium Due upon Payment Default) indicates, "If the entire premium is not then paid in full, the 'tail' insurance coverage shall terminate."

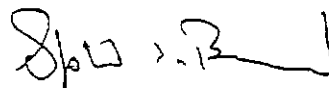
To provide clarity, a time period for payment of the entire amount due after default should be included. This time period should be 30 days from the date of notice by the insurer to the insured of the default and full amount due.

It is also our suggestion that the following additional language be added to the end of the above quoted statement (Subsection 6.2): "as of the effective date of the 'tail' insurance and all premiums paid by the insured be returned within 30 days."

The need for this addition is to add some definitive language for the period of coverage provided in the event of default in payment by the insured.

We hope this information has been helpful and if we can provide additional assistance, please do not hesitate to call on us.

Very truly yours,



Stephen L. Brown
Senior Vice President
Chief Operating Officer

SLB/cmh

Enclosure