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NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Insurance Commission TITLE NUMBER: 114

CITE AUTHORITY W.Va. Code §33-2-10 and 33-12-35

AMENDMENT TO AN EXISTING RULE: YES X NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 42

TITLE OF RULE BEING AMENDED: Continuing Education for Individual Insurance Producers

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Virgil T. Helton
Cabinet Secretary
West Virginia Department of Revenue

$5.00

TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 42
CONTINUING EDUCATION FOR INDIVIDUAL INSURANCE PRODUCERS

Section

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TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 42
CONTINUING EDUCATION FOR INDIVIDUAL INSURANCE PRODUCERS

§114-42-1. General.

1.1. Scope. -- This legislative rule establishes standards for continuing insurance education requirements and the sanctions to be imposed for failure to comply with such requirements.

1.2. Authority. -- W. Va. Code §§33-2-10 and 33-12-35.

1.3. Filing Date. -- ~~May 6, 2005.~~

1.4. Effective Date. -- ~~May 6, 2005.~~

§114-42-2. Definitions.

In addition to the definitions in W.Va. Code §33-12-8, the following definitions apply:

~~2.1. "Individual insurance producer " or "active individual insurance producer " means an individual licensed by the commissioner to solicit, negotiate, effect or countersign insurance contracts on it's behalf. For purposes of this rule, reference to the terms "individual insurance producer" and "active individual insurance producer" include the term "solicitor" unless specifically excluded.~~

2.~~2~~1. "Approved course" means a course or program of instruction approved by the commissioner and the Board of Insurance Agent Education for continuing insurance education credit.

2.2. "Biennium" means the two-year reporting period beginning the first day of July, 2006, and ending on the thirtieth day of June, 2008, and every two-year period thereafter.

2.3. "Board" means the Board of Insurance Agent Education ~~continued~~ established pursuant to W. Va. Code §33-12-7.

2.4. "Cancelled license" means a license to engage in the sale of insurance which has been:

a. voluntarily voided by request of the individual insurance producer and approved by the commissioner; or

b. terminated for failure to satisfy the mandatory continuing education requirements as of the last day of the reporting period following his or her suspension.

2.5. "Certificate of course completion" means a document acceptable to the commissioner which signifies satisfactory completion of an approved course and reflects hours of credit earned.

2.6. "Commissioner" means the Commissioner of Insurance of the state of West Virginia.

2.7. ~~"Provider" means a person, corporation, professional association or its local affiliates, an insurance company or other entity which is approved by the commissioner and provides approved continuing insurance education to individual insurance producers.~~ "Individual insurance producer " or "active individual insurance producer " means an individual licensed by the commissioner to solicit, negotiate, effect or countersign insurance contracts on the insurer's behalf. For purposes of this rule, reference to the terms "individual insurance producer" and "active individual insurance producer" include the term "solicitor" unless specifically excluded.

2.8. "Provider" means a person, corporation, professional association or its local affiliates, an insurance company or other entity which is approved by the commissioner and provides approved continuing insurance education to individual insurance producers.

2.~~8~~9. "Reporting period" means the applicable biennium during which an individual insurance producer must meet his or her continuing insurance education requirements in order to maintain his or her license as required by W. Va. Code §33-12-8.

2.~~9~~10. "Solicitor" means an individual appointed and authorized by an individual insurance producer to solicit and receive applications for insurance as a representative of the individual insurance producer.

2.~~10~~11. "Suspended insurance producer " ~~is~~ means an individual whose license to engage in the sale of insurance has been temporarily withdrawn until such time as the individual insurance producer has successfully completed his or her continuing insurance education requirements.

~~2.11. "Biennium" means the two-year reporting period beginning the first day of July, 2006, and ending on the thirtieth day of June, 2008, and every two-year period thereafter.~~

2.12. "Suspension of all licenses issued for any kind or kinds of insurance" means those licenses for which continuing insurance education is required pursuant to this rule and W. Va. Code §33-12-1, et seq.

§114-42-3. Applicability.

3.1. This rule applies to solicitors and resident individual insurance producers licensed by

the commissioner to engage in the sale of one or more of the following types of insurance:

a. Life insurance, annuity contracts, variable annuity contracts and variable life insurance;

b. Sickness, accident and health insurance;

c. All lines of property and casualty insurance;

d. Preneed burial insurance contracts;

e. All other lines of insurance for which an examination is required by the commissioner;

f. Individual insurance producers appointed on behalf of a licensed health maintenance organization; and

g. Individual insurance producers engaged in telemarketing insurance products.

§114-42-4. Exemptions.

4.1. Continuing education requirements shall not apply to:

a. Persons holding resident licenses for any kind or kinds of insurance for which an examination is not required by the commissioner;

b. Persons selling only limited lines credit insurance and limited lines insurance;

c. Any such limited or restricted license as the commissioner may exempt;

d. Individual insurance producers whose licenses have expired pursuant to W. Va. Code §33-12-17;

e. Individual insurance producers who have voluntarily cancelled their licenses;

f. Non-resident individual insurance producers ; and

g. Adjusters.

4.2. Individual insurance producers newly licensed on or after July 1 of the second year of

a biennium are exempt from continuing insurance education requirements only for the biennium in which the license was issued.

§114-42-5. Continuing Insurance Education Course Requirements.

5.1. A continuing insurance education course shall not qualify for use as continuing insurance education credit unless it is filed with and approved by the commissioner and the Board.

5.2. A provider shall not implement any material change in a continuing insurance education course previously approved by the commissioner until the change has been filed with and approved by the commissioner and the Board.

5.3. The commissioner will not give an individual insurance producer credit for any continuing insurance education course which is taken prior to the issuance of written approval by the commissioner and the Board.

5.4. If a continuing insurance education course is taken more than once in a reporting period, the commissioner will give the individual insurance producer credit only for the first time that course was taken and completed during the applicable reporting period.

5.5. The commissioner may withdraw approval of a continuing insurance education course for any of the following reasons:

a. The continuing insurance education course teaching methods or course content have been materially changed without being filed with or approved by the commissioner and the Board;

b. The continuing insurance education course provider has certified to the commissioner that an individual insurance producer has satisfactorily completed the course when, in fact, the individual insurance producer has not done so;

c. The continuing insurance education course provider fails to certify to the commissioner that the individual insurance producer has satisfactorily completed the course when, in fact, the individual insurance producer has done so; or

d. There is other good reason to withdraw approval of a continuing insurance education course.

5.6. In those instances where the commissioner has withdrawn approval for a continuing insurance education course, individual insurance producers who successfully completed the course

prior to the withdrawal of approval shall receive credit toward their continuing education requirements.

5.7. Scripted presentations for individual insurance producers involved in telemarketing insurance products pursuant to W. Va. Code §33-12-8 shall be filed with the commissioner no later than the first day of each reporting period or at least sixty (60) days prior to doing business in the state, whichever comes first.

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§114-42-6. Insurance Producer Continuing Insurance Education ~~Requirements~~ Exceptions; Extensions of Time; Canceled License Procedures; and Reciprocity.

~~6.1. The commissioner may, upon application and for good cause shown, grant an individual insurance producer an extension of time in which to meet the continuing insurance education requirements. Extensions may be granted for the following reasons:~~

~~a. The individual insurance producer has been engaged in active military duty outside the state for at least twelve (12) months during the biennium;~~

~~b. The individual insurance producer was or has become physically or mentally temporarily or permanently disabled by injury, illness or disease and was unable to perform adequately the duties required of him or her as a licensed individual insurance producer for a period of at least twelve (12) months during the biennium; or~~

~~c. Any such other reason as the commissioner may determine on a case-by-case basis as constituting good cause.~~

6.1. The commissioner shall refuse to renew the appointments or issue new appointments for those lines of insurance specified in section 3 of this rule to any individual insurance producer who does not satisfy the minimum continuing insurance education requirements.

6.2. ~~An individual insurance producer should submit a request for an extension of time in which to meet the continuing insurance education requirements to the commissioner in writing at least thirty (30) days prior to the last day of the reporting period and shall include in the request an explanation together with reasonable verification of the hardship rendering an extension necessary.~~ An individual insurance producer may carry-over a maximum of six (6) credit hours into the next reporting period when the producer has exceeded the minimum continuing education requirements for the current biennial reporting period.

6.3. ~~The commissioner shall refuse to renew the appointments or issue new appointments for those lines of insurance specified in section 3 of this rule to any individual insurance producer~~

~~who does not satisfy the minimum continuing insurance education requirements~~. Any individual insurance producer who has not complied with the continuing insurance education requirements by the end of the reporting period may thereafter obtain credits to be carried back to meet the requirements of the preceding reporting period. The Commissioner will assess a $5.00 late submission fee for each continuing insurance education credit obtained and submitted after the reporting period which are to be carried back to satisfy the requirements of the preceding reporting period.

~~6.4. An individual insurance producer may not carry forward excess credit hours accumulated during one reporting period to satisfy the continuing insurance education requirements of the following reporting period.~~

6.4. An individual insurance producer may use any continuing insurance education credit obtained to satisfy the mandatory continuing insurance education requirements of one reporting period only.

6.5. ~~Any individual insurance producer who has not complied with the continuing insurance education requirements by the end of the reporting period may thereafter obtain credits to be carried back to meet the requirements of the preceding reporting period. The Commissioner will assess a $5.00 late submission fee for each continuing insurance education credit obtained and submitted after the reporting period which are to be carried back to satisfy the requirements of the preceding reporting period.~~ An individual insurance producer who has an active annual membership in an organization or association recognized and approved by the Commissioner as a state, regional or national professional insurance organization or association may be approved by the Commissioner for up to two (2) hours of continuing insurance education in each biennial reporting period.

a. In determining whether to approve an organization's application for approval under this subsection, the Commissioner should consider:

1. The purpose and goals of the organization;

2. The extent to which the organization makes educational opportunities available to its members;

3. The degree to which the members participates in educational programs;

4. The extent to which the organization's educational programs and materials advance the knowledge of insurance-related topics; and

5. Any other criteria that the Commissioner deems advisable.

b. There shall not be more than one (1) hour of continuing insurance education awarded to an individual insurance producer for 12 consecutive months' active membership in a professional insurance organization during a biennial reporting period.

c. Credit for continuing insurance education pursuant to this subsection may only be awarded to individual insurance producers who are required to complete more than six (6) hours of continuing education biennially. Requests for approval of credit pursuant to this subsection and for recognition and approval as an eligible organization must be made in the manner prescribed by the Commissioner on forms available on the West Virginia Offices of the Insurance Commissioner's website.

6.6. ~~An individual insurance producer may use any continuing insurance education credit obtained to satisfy the mandatory continuing insurance education requirements of one reporting period only~~. The commissioner may, upon application and for good cause shown, grant an individual insurance producer an extension of time in which to meet the continuing insurance education requirements. Extensions may be granted for the following reasons:

a. The individual insurance producer has been engaged in active military duty outside the state for at least twelve (12) months during the biennium;

b. The individual insurance producer was or has become physically or mentally temporarily or permanently disabled by injury, illness or disease and was unable to perform adequately the duties required of him or her as a licensed individual insurance producer for a period of at least twelve (12) months during the biennium; or

c. Any such other reason as the commissioner may determine on a case-by-case basis as constituting good cause.

6.7. An individual insurance producer should submit a request for an extension of time in which to meet the continuing insurance education requirements to the commissioner in writing at least thirty (30) days prior to the last day of the reporting period and shall include in the request an explanation together with reasonable verification of the hardship rendering an extension necessary.

6.~~7~~8. Individual insurance producers who have a cancelled license or an expired license pursuant to W. Va. Code §33-12-17 shall successfully complete pre-licensing education and examination before qualifying for a new license, and shall thereafter successfully complete the continuing insurance education credits required pursuant to W. Va. Code §§33-12-1 et seq. and the guidelines established by the Board.

a. No individual insurance producer may allow his or her license to expire as a means

to circumvent the mandatory continuing education requirements.

6.~~8~~9. The commissioner shall recognize the continuing insurance education requirements obtained during the reporting period through an approved provider of another state only in those instances where all the following conditions are met:

a. The individual insurance producer is a former resident individual insurance producer for whom a clearance letter was previously issued by the commissioner;

b. The individual insurance producer is currently licensed in good standing in another state and has been so licensed since leaving West Virginia; and

c. The individual insurance producer is in the process of establishing residency in West Virginia and has requested to have his or her resident individual insurance producer's license reinstated.

§114-42-7. Proof of Completion.

7.1. Upon completion of a continuing insurance education course, the provider shall certify to the commissioner the names of all individual insurance producers who satisfactorily completed the continuing insurance education course. The certification shall be in the form prescribed by the commissioner.

a. The continuing education attendance certification roster shall be mailed by the provider to the commissioner within thirty (30) days after the continuing insurance education course is completed. The provider shall submit a self-study course certification roster to the commissioner within thirty (30) days of receipt of the completed course from the individual insurance producer.

b. The provider of the continuing insurance education course or a self-study continuing education course shall furnish a certificate of satisfactory completion to the individual insurance producer completing the course. The individual insurance producer shall retain a copy of the certificate for not less than four (4) years from the date the course is completed.

c. The provider shall retain a copy of a certification roster of attendance and self-study courses submitted for not less than four (4) years from the date the course is completed.

7.2. Providers of continuing insurance education courses and individual insurance producers shall make available to the commissioner or his or her designee copies of certificates upon request of the commissioner.

7.3. The commissioner shall assess a late fee against a provider submitting a course certification roster outside the time period provided for in subsection 7.1 of this section in the amount of twenty-five dollars for each individual insurance producer listed on the certification roster who satisfactorily completed the continuing insurance education course.

7.4. The commissioner may disapprove the course(s) or program(s) of instruction developed or sponsored by a provider who establishes a pattern or practice of failure to comply with this rule or who fails to pay any fee assessed under this rule. The provider shall pay all applicable fees before the commissioner may complete approval or re-approval of the courses or programs of instruction developed or sponsored by the provider.

§114-42-8. Disciplinary Process.

8.1. No later than sixty (60) days prior to the end of the reporting period, the commissioner shall provide written notification to individual insurance producers subject to continuing insurance education requirements advising them as to the status of their continuing insurance education credits.

a. The commissioner shall provide the notification to each individual insurance producer either by personal delivery or by regular mail addressed to the individual insurance producer at the last address appearing for the individual insurance producer in the records of the commissioner.

b. Individual insurance producers who sell only preneed burial insurance contracts shall file with the commissioner an affidavit, on a form to be provided by the commissioner, verifying that the individual insurance producer is not engaged in the sale of any other type of insurance product.

c. Individual insurance producers engaged solely in telemarketing insurance products by a scripted presentation which has been filed with and approved by the commissioner shall file an affidavit, on a form to be provided by the commissioner, verifying that the individual insurance producer is not engaged in the sale of any other type of insurance product.

8.2. Any individual insurance producer who does not anticipate pursuing the required continuing insurance education requirements may elect to cancel his or her license prior to the end of the reporting period by submitting a written request to the commissioner. Cancellation of a license revokes any privilege the individual insurance producer may have had to reinstate his or her license without completion of a pre-licensing insurance education course and examination.

a. Each request for cancellation of a license shall include the individual insurance producer's name, address, individual insurance producer license number, telephone number and

reason for cancellation.

b. Cancellation of a license prohibits an individual from further transacting insurance in West Virginia without successful completion of pre-licensing education and examination.

8.3. Any individual insurance producer who has not met the continuing insurance education requirements for any reporting period may agree to a voluntary suspension of his or her license until such time as the continuing insurance education requirements have been met.

a. Each request for a voluntary suspension of a license shall include the individual insurance producer's name, address, individual insurance producer license number and telephone number.

b. An individual insurance producer may not transact insurance in West Virginia during the suspension period.

c. Any individual insurance producer who does not satisfy the mandatory continuing education requirements as of the last day of the reporting period following his or her voluntary suspension shall have his or her license automatically cancelled pursuant to the provisions of W. Va. Code §33-12-8(h).

8.4. The commissioner will enter an order automatically suspending the license of any individual insurance producer failing to meet continuing insurance education requirements who has not been granted an extension of time within which to comply, or who has submitted to the commissioner a false or fraudulent certificate of compliance. The license shall remain suspended until such time as the individual insurance producer has demonstrated to the satisfaction of the commissioner that he or she has complied with all the requirements of this rule and all other applicable laws.

a. The individual insurance producer will have an opportunity to request a hearing on an order resulting from the producer's failure to meet continuing insurance education requirements pursuant to subsection 8.5 of this section. The effect of the order will be stayed pending the individual insurance producer's request for a hearing within the time designated in subsection 8.5 or pending completion of the hearing if a hearing is timely requested. If a hearing is not timely requested, the order will become final.

~~b. "Suspension of all licenses issued for any kind or kinds of insurance" shall be interpreted to mean those licenses for which continuing insurance education is required pursuant to this rule and W. Va. Code §33-12-1, et seq.~~

~~c~~b. The burden of proving successful completion of continuing insurance education courses is at all times upon the individual subject to the continuing insurance education requirements.

~~d~~c. Any individual insurance producer who does not satisfy the mandatory continuing education requirements as of the last day of the reporting period following his or her suspension shall have his or her license automatically cancelled pursuant to the provisions of W. Va. Code §33-12-8(~~h~~j).

8.5. Hearings - A hearing may be requested by an individual insurance producer or a provider in accordance with W. Va. Code §§33-2-13, 114CSR13, and the following:

a. Any individual insurance producer whose license is being suspended due to his or her failure to successfully complete and submit the required hours of continuing insurance education courses must submit a request for hearing in writing to the commissioner's office address in Charleston, West Virginia, either in person or by certified mail, return receipt requested. Such hearing shall be held within forty-five (45) days of the receipt of request for hearing and notice of the time, place, and matters to be considered at the hearing shall be provided by the Commissioner to all parties directly involved within fifteen (15) days of the date of hearing. ~~The~~ Any request for ~~hearing~~ re-hearing must be in compliance with W. Va. Code §33-2-13, and must be made within ~~ten (10)~~ thirty (30) days after the individual insurance producer's receipt of the order entered by the commissioner pursuant to subsection 8.4 of this section for reconsideration of the matter. The commissioner shall mail a copy of the order to the individual insurance producer by certified mail, return receipt requested. In cases where proof of receipt of the order is not received by the commissioner, service of the order will be presumed complete upon the expiration of four (4) days following deposit by the commissioner in the United States Mail. If the individual insurance producer makes a timely request for a hearing, the scope of the hearing will be whether the producer has successfully completed and submitted the required hours of continuing insurance education courses. The hearing shall be conducted as provided in W. Va. Code §33-2-13.

b. Any provider that has received a notice of assessed fee or whose course(s) or program(s) of instruction has been disapproved must submit a request for hearing in the same manner and within the same time as that set forth in subdivision a of this subsection. The commissioner shall mail a copy of the notice of fee or notification of disapproval of courses or programs to the provider by certified mail, return receipt requested. In cases where proof of receipt of the notice of fee or notification of disapproval is not received by the commissioner, service will be presumed complete upon the expiration of four (4) days following deposit by the commissioner in the United States Mail. If the provider makes a timely request for a hearing, the scope of the hearing will be whether the fee was properly assessed, whether the provider has failed to pay the fee or whether the provider has established a pattern or practice of failure to comply with this rule. The

hearing shall be conducted as provided in W. Va. Code §33-2-13.

c. All requests for hearing must identify the order or notification upon which the hearing is requested and must set forth the grounds upon which it is asserted that the order or notification should be vacated or modified.

d. Untimely hearing requests will not be granted. A request is untimely if it is made by or on behalf of the individual insurance producer or provider after the time specified in subdivision a of this subsection or prior to the issuance of the order or notification.

8.6. Failure to appear at a hearing requested pursuant to subsection 8.5 of this section will result in the following:

a. If the individual insurance producer fails to appear either in person or by counsel at the hearing without obtaining a continuance pursuant to 114CSR13, the order suspending his or her license will become final, and the individual insurance producer shall be assessed the costs set forth in subsection 8.7 of this section.

b. If the provider fails to appear either in person or by counsel at the hearing without obtaining a continuance pursuant to 114CSR13, the provider's course(s) or program(s) will continue to be disapproved and the provider shall be assessed the costs set forth in subsection 8.7 of this section.

8.7. Assessment of Costs

a. A docket fee of seventy-five dollars may be assessed against an individual insurance producer or provider following a hearing if the commissioner's order suspending the individual insurance producer's license or order disapproving the provider's course(s) or program(s) of instruction is not rescinded pursuant to W.Va. Code §33-2-13.

b. The commissioner may assess any individual insurance producer or provider who fails to have the commissioner's order rescinded the costs of the hearing as provided for in W. Va. Code §33-2-13.

c. The individual insurance producer or provider shall pay all applicable assessed fees before the commissioner may complete reinstatement of the individual insurance producer's license or the approval of a provider's course(s) or program(s) of instruction.

d. All fees collected under this section shall be deposited, transferred, and paid out in accordance with W. Va. Code §33-3-13.

8.8. Upon suspension of an individual insurance producer's license for failure to comply with the mandatory continuing insurance education requirements for the reporting period, the commissioner shall:

a. Give notice of the suspension to the insurer(s) or employing agent with whom the individual insurance producer has a contractual relationship; and

b. Cancel all appointments of the individual insurance producer subject to disciplinary action.

8.9. An insurer or employing individual insurance producer shall not renew or issue new appointments subject to continuing insurance education requirements to an individual insurance producer whose license has been suspended for failure to comply with mandatory continuing insurance education requirements until such time as the individual insurance producer's license has been reinstated and an application and appropriate fee have been submitted to and approved by the commissioner.

8.10. Neither cancellation of a license nor any disciplinary action levied as a result of non-compliance with continuing insurance education requirements shall prohibit an individual from receiving commissions which were vested and earned while that individual maintained an approved license.

~~**§114-42-9. Severability.**~~

~~9.1. If any provision of this rule or the application of this rule to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provisions to other persons or circumstances shall not be affected by the holding.~~