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

Form #2

Do Not Mark In This Box

FILED

2001 DEC 11 A 10: 28

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Insurance Commission TITLE NUMBER: 114

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code §§ 33-2-10 and 33-20B-2(e)

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 RULE BEING PROPOSED: 59

TITLE OF RULE BEING PROPOSED: Medical Malpractice Insurance Consent to Rate and Guide "a" Rate Agreements

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 Jan. 10, 2002 AT 4:30 PM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Mary Jane Pickens, Associate Counsel

Offices of the Insurance Commissioner
P.O. Box 50540

Charleston, WV 25305-0540

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

Brian Kastner
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

$4.40

Insurance Commissioner
Legislative Rule
Title 114, Series 59

MEDICAL MALPRACTICE INSURANCE
CONSENT TO RATE AND GUIDE "A" RATE AGREEMENTS

Title 114, Series 59

BRIEF SUMMARY OF RULE

This rule is proposed pursuant to the provisions of Senate Bill 6014, passed during the sixth 2001 special legislative session on November 6 2001, which amended West Virginia Code Section 33-20B-2. The rule provides standards and procedures for approval of consent to rate and guide "a" rate agreements proposed by insurers providing medical malpractice insurance policies to health care providers. The rule requires insurers to file an appendix as part of or as a supplement to its rating manual which will set forth the risks and reasons for which it will request approval of consent to rate agreements. The insurer must, with the agreement of the insured, request approval of each agreement using a form set forth in the rule. The rule states that the use of guide "a" rates will be based upon the insurer's ability to demonstrate that the risk being insured is one for which the insurer has no credible loss experience and that therefore the use of a guide "a" rate is appropriate. The rule further sets forth the period of time within which the Commissioner must approve an agreement before the agreement is deemed approved, and the actions to be taken upon disapproval. Finally, the rule provides for the assessment of a penalty or other action upon violation of the rule. The form agreement may be amended as deemed necessary by filing a procedural rule. This rule creates a new series, Series 59, in the insurance commission rules.

Insurance Commissioner
Legislative Rule
Title 114, Series 59

MEDICAL MALPRACTICE INSURANCE
CONSENT TO RATE AND GUIDE "A" RATE AGREEMENTS

Title 114, Series 59

STATEMENT OF CIRCUMSTANCES

On November 6, 2001, The West Virginia Legislature passed Senate Bill 6014 which amended West Virginia Code Section 33-20B-2 relating to rate making for medical malpractice insurance. This rule is being proposed pursuant to the language in Subsection (e) of West Virginia Code Section 33-20B-2, which requires the Insurance Commissioner to propose rules for legislative approval which set forth the standards and procedure for reviewing and approving consent to rate and guide "a" rate agreements between insured health care providers and their insurers.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Medical Malpractice Insurance
Consent to Rate and Guide "a" Rate Agreements
Title 114, Series 59

Type of Rule: **_XX_ Legislative ___Interpretive ____Procedural**

Agency: Insurance Commissioner

Address: Post Office Box 50540
1124 Smith Street, Greenbrooke Building
Charleston, West Virginia 25305-0540

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1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
ESTIMATED TOTAL COST	None				
PERSONAL SERVICES	None				
CURRENT EXPENSE	None				
REPAIRS AND ALTERNATIONS	None				
EQUIPMENT	None				
OTHER	None				

2. Explanation of above estimates:

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

3. Objectives of these rules:

The objective of this rule is to set forth the standards and procedures for approval of consent to rate and guide "a" rate agreements by the Insurance Commissioner in order to carry out the provisions of West Virginia Code Section 33-20B-2(e) dealing with rates and rate making in connection with medical malpractice insurance.

Rule Title: Medical Malpractice Insurance
Consent to Rate and Guide "a" Rate Agreements
Title 114, Series 59

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.

This rule will establish standards for approval of agreements that will allow an insurer to charge a premium in connection with a medical malpractice insurance policy that is higher or lower than the insurer's filed manual rate that would otherwise be applied to the risk being insured. The rule could therefore affect health care providers, who will be required to pay more for coverage on an individual basis if the health care provider poses an unusually high risk. The law was previously silent on these types of agreements between insureds and insurers specifically in the medical malpractice line. Now that they are allowed, subject to approval by the Insurance Commissioner, it is likely that more insureds will be required to pay higher premiums in order to obtain coverage. However, these insureds may be ones that otherwise would be unlikely to find coverage without such an agreement.

C. Economic Impact on Citizens/Public at Large.

For insureds who must pay higher premiums pursuant to a consent to rate agreement or guide "a" rate agreement in order to obtain coverage, the increased cost may be passed on by the provider and the cost of health care could be affected.

Date: December 11, 2001

Signature of Agency Head or Authorized Representative

Mary Jane Pickens

MARY JANE PICKENS, ASSOCIATE COUNSEL

114CSR59

WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 59
MEDICAL MALPRACTICE INSURANCE
CONSENT TO RATE AND GUIDE "A" RATE AGREEMENTS

Section

114-59-1. General.

114-59-2. Definitions.

114-59-3. Approval Required for All Non-standard Rates.

114-59-4. Amendments to the West Virginia Medical Malpractice Policy Agreement Form.

114-59-5. Violation.

Appendix A. Application for Approval of Consent to Rate Agreement or Use of Guide "a" Rate. "West Virginia Medical Malpractice Policy Agreement"

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE 114
WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 59
MEDICAL MALPRACTICE INSURANCE
CONSENT TO RATE AND GUIDE "A" RATE AGREEMENTS

§114-59-1. General.

1.1. Authority. -- This rule is promulgated pursuant to the authority granted by W.Va. Code §33-20B-2 and §33-2-10.

1.2. Purpose. -- The purpose of this rule is to prescribe standards and procedures for reviewing and approving consent to rate agreements or guide "a" rates for medical malpractice insurance policies.

1.3. Scope. -- Except as otherwise provided, this rule applies to any insurer authorized to transact insurance in West Virginia that writes policies providing medical malpractice insurance coverage for health care providers.

1.4. Filing Date. --

1.5. Effective Date. --

§114-59-2. Definitions.

2.1. "Commissioner" means the commissioner of insurance.

2.2. "Consent to rate" means a written agreement between an insurer and an insured resulting in a rate applied to the risk that exceeds the standard manual rate approved by the commissioner in a rate filing that would otherwise apply to the risk

2.3. "Guide 'a' rate" means a rate that is not backed up by credible loss experience statistics of the carrier writing the risk. These rates are used for unusual risks and are based on the judgment of an underwriter on an individual risk basis.

2.4. "Medical malpractice insurance" means insurance coverage for any claim for damages or loss against a health care provider arising out of the death or injury of any person proximately caused by negligence in the rendering of, or the failure to render, health care services.

2.5. "Non-standard rate" means a rate that is either higher or lower than manual rates set forth in an approved filing that would otherwise apply to a particular risk.

2.6. "Rating manual" means the rates, schedules of rates, classification rules, rating rules, minimum premiums, minimum premium rules, policy fees or rules and any other information which the insurer uses to determine the final dollar charge for medical professional liability insurance coverage.

§114-59-3. Approval Required for All Non-standard Rates.

3.1. Any insurer that wishes to negotiate consent to rate agreements or apply guide "a" rates in connection with the issuance or renewal of any policy providing coverage for medical malpractice liability, shall first file with the commissioner as part of its filing made pursuant to subsection 33-20B-3(a) of the West Virginia Code, or as a supplement to the filing, an appendix which describes the specific risks or reasons for which non-standard rates will be applied to particular risks. The appendix must also set forth the ranges of rates that will be applied to risks that may be the subject of consent to rate agreements: *Provided,* that the appendix is not required to include rate ranges that will apply to guide "a" rates.

3.2. An insurer shall obtain from the insurance applicant all information necessary to determine the proper application of a non-standard rate before seeking approval from the commissioner of a consent to rate agreement or guide "a" rate. The application for approval of a consent to rate agreement or the use of a guide "a" rate in connection with a specific risk shall be signed by the insured and the insurer, and shall be submitted by the insurer on the West Virginia Medical Malpractice Policy Agreement form, Appendix A to this rule.

3.3. An application submitted by an insurer pursuant to subsection 3.2 of this rule shall:

a. In the case of a consent to rate agreement, include the insurer's certification that the risk or reasons for which approval of the consent to rate agreement is requested, and the rate to be applied to the risk, are set forth in the appendix to the rating manual previously approved by the commissioner as provided in subsection 3.1 of this section; or

b. In the case of a guide "a" rate, demonstrate that the insurance applicant is a risk for which the insurer has no credible loss experience statistics.

3.4. If the risk or reasons for which approval of a consent to rate agreement are not included in the appendix to the rating manual previously approved by the commissioner as provided in subsection 3.1 of this section, the application for approval of a consent to rate agreement submitted by the insurer shall describe the risk and state with specificity the reasons for the agreement. For the purposes of this subsection, a statement that "coverage is not available at manual rates," or similar statements will be deemed insufficient.

3.5. An application for approval of a consent to rate agreement or the use of a guide "a" rate in connection with a specific risk shall be approved or denied by the commissioner within fifteen

days of receipt of the application by the commissioner as reflected by the "received" stamp placed on the application on the date it is received in the Rates & Forms Division of the West Virginia Insurance Commission. Failure of the commissioner to disapprove the application within this time shall result in its approval.

3.6. In the event a consent to rate agreement or the use of a guide "a" rate in connection with a specific risk is disapproved by the commissioner, the disapproval must specify in what respect(s) the commissioner finds the application to be unacceptable. Notice of the disapproval shall be provided to the agent, the insurer and the insured.

3.7. At any subsequent policy renewal, the requirements of this section must be complied with and a new application for approval must be filed by the insurer.

3.8. The insurer shall retain a copy of each signed consent to rate agreement and a copy of all underwriting and other policy information generated in connection with each consent to rate agreement or guide "a" rate for a period of three years after the date that the policy expires, and shall make this information available to the commissioner upon request.

§114-59-4. Amendments to West Virginia Medical Malpractice Policy Agreement Form.

4.1. The commissioner may as needed amend the West Virginia Medical Malpractice Policy Agreement form, which is Appendix A to this rule, by procedural rule.

§114-59-5. Violation.

5.1. Upon a determination by the commissioner that there is probable cause to believe that any insurer has charged a non-standard rate in violation of section 33-20B-2 of the West Virginia Code or this rule, the commissioner shall provide written notice to the insurer of the time and place at which the insurer shall appear to show good cause why a civil penalty, refund to the insured, or transfer from surplus should not be ordered.

5.2. If, after notice and hearing as provided in subsection 5.1 of this section, the commissioner determines that a violation has occurred, the commissioner shall assess a civil penalty and/or order that the insurer issue a refund to the insured or transfer from surplus the difference between the manual rate otherwise applicable to the risk and the rate charged.

APPENDIX A

WEST VIRGINIA MEDICAL PROFESSIONAL LIABILITY AGREEMENT FORM

TO: Rates and Forms Division WV Insurance Dept. DATE: _____
P.O. Box 50540
Charleston, WV 25305

In accordance with Section 33-20B-2(e) of the West Virginia Code and for the reasons provided below, approval is requested of the following proposed rates, which are in excess of or lower than that provided by filings otherwise applicable to the risk.

(1) TYPE OF AGREEMENT ( ) Consent to Rate Agreement
( ) Guide "a" Rate Agreement

(2) INSURED NAME _____

(3) INSURED TELEPHONE _____

(4) INSURED ADDRESS _____

(5) TYPE OF RISK (i.e. physicians, nursing homes, hospitals, etc.) _____

(6) POLICY TERM _____ _____ _____
Inception Expiration Years

(7) POLICY NUMBER _____

(8) INSURER _____

(9) INSURER ADDRESS _____

(10) AGENT'S NAME _____

(11) AGENT'S ADDRESS _____

(12)

Coverage	Limits (by coverage)	Manual Premium (inclusive of debits and credits)	Surcharge % or reduction	Proposed Premium

*Columns are not additive. The Insuring Company certifies that it has explained to the Insured how the proposed premium has been derived.

(13) IN THE CASE OF A **CONSENT TO RATE AGREEMENT**, THE INSURER MUST CERTIFY THAT THE REASON THIS AGREEMENT IS NECESSARY IS ONE OF THE SPECIFIED REASONS STATED IN THE APPENDIX TO THE RATING MANUAL AS REQUIRED BY §114-59-3.1.

The WV Insurance Commission Filing Number assigned to the aforesaid appendix is:

_____

IF THE RISK OR REASON(S) THIS AGREEMENT IS NECESSARY IS NOT ONE OF THOSE SPECIFIED IN THE FILING REQUIRED BY §114-59-3.1, THE INSURER MUST DESCRIBE THE RISK AND STATE WITH SPECIFICITY THE REASONS FOR THE AGREEMENT.

_____

_____

_____

(14) IN THE CASE OF A **GUIDE "A" RATE AGREEMENT**, THE INSURER MUST CERTIFY THAT THE REASON(S) THIS AGREEMENT IS NECESSARY IS THAT THIS IS A RISK FOR WHICH THE INSURER HAS NO CREDIBLE LOSS EXPERIENCE STATISTICS.

CERTIFICATION

State of _____ County of _____

To-wit:

I, _____, do swear or affirm that I have carefully examined each of the questions asked in items (12), (13), and (14) in this Agreement and each of the responses thereto and, to the best of my knowledge and ability, all responses, information, exhibits, and documentary evidence submitted in support thereof are true and correct.

_____
(Type or Print Name)

_____
(Title of Insuring Company Official)

_____
(Signature)

_____
(Date)

Sworn to and subscribed before me this _____ day of _____ 19 _____.

My commission expires: _____.

{Notary Seal} _____
Notary Public

The above was completed prior to my signing. I note that the rate(s) being charged is:

Choose one option below:

( ) in excess of the rate(s) filed and approved manual rate(s) for this insurer.

( ) below the rate(s) filed and approved manual rate(s) for this insurer.

INSURED SIGNATURE _____

WARNING: THE INSURED SHOULD INVESTIGATE THE POSSIBILITY OF ELIGIBILITY FOR OTHER PLANS THAT MAY BE AVAILABLE TO THE INSURED AT THE TIME OF SIGNING.

NOTICE: An application for approval of a consent to rate agreement or the use of a guide "a" rate or other non-standard rate in connection with a specific risk shall be approved or denied by the Commissioner within 15 days of receipt of the application by the Commissioner as reflected by the "received" stamp placed on the application on the date it is received in the Rates & Forms Division of the West Virginia Insurance Commission. Failure of the Commissioner to disapprove the application within this time shall result in its approval.

STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Legal Division

BOB WISE
Governor

JANE L. CLINE
Insurance Commissioner

December 11, 2001

HAND DELIVERED

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

Dear Ms. Cooper:

Enclosed please find for filing one (1) copy of the following:

1) Notice of a Comment Period on a Proposed Rule and Consent of Tax and Revenue Cabinet Secretary to Proposed Rule;

2) Brief Summary of Rule;

3) Statement of Circumstances;

4) Fiscal Note; and

5) The proposed rule entitled "Medical Malpractice Insurance Consent to Rate and Guide "a" Rate Agreements" (Series 59).

Please contact me if further information is required.

Sincerely,

Mary Jane Pickens
Associate Counsel

MJP/jz
Enclosures

Post Office Box 50540
Charleston, West Virginia 25305-0540

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Telephone (304) 558-0401
Facsimile (304) 558-1362