

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

Form #3 ■

Do Not Mark In This Box

FILED

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OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Insurance Commission TITLE NUMBER: 114

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

AMENDMENT TO AN EXISTING RULE: YES NO

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

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.



Authorized Signature



STATE OF WEST VIRGINIA

Offices of the Insurance Commissioner

Legal Division

BOB WISE
Governor

JANE L. CLINE
Insurance Commissioner

February 22, 2002

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 Agency Approval of a Proposed Rule and Consent of Cabinet Secretary of Tax and Revenue;
- 2) Fiscal Note for Proposed Rule;
- 3) Brief Summary of Rule;
- 4) Statement of Circumstances;
- 5) Legislative Rule-Making Review Committee Questionnaire; and
- 6) Agency approved proposed rule entitled "Medical Malpractice Insurance Consent to Rate and Guide "a" Rate Agreements" (Title 114, Series 59).

Please contact me if further information is required.

Sincerely,

A handwritten signature in cursive script that reads "Mary Jane Pickens".

Mary Jane Pickens
Associate Counsel

MJP/jz
Enclosures

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

=====

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.

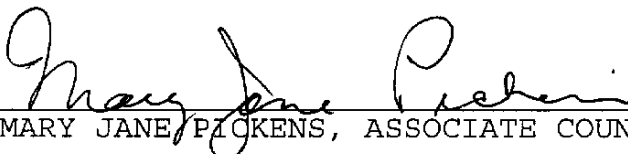
This rule will establish standards for approval of agreements that will allow an insurer to charge a premium in connection with a medical malpractice insurance policy that is higher or lower than the insurer's filed manual rate that would otherwise be applied to the risk being insured. The rule could 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: February 22, 2002

Signature of Agency Head or Authorized Representative



MARY JANE PICKENS, ASSOCIATE COUNSEL

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.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: February 22, 2002

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: OFFICE OF THE INSURANCE COMMISSIONER
ATTN: Legal Division
1124 Smith Street
Post Office Box 50540
Charleston, West Virginia 25305-0540

LEGISLATIVE RULE TITLE: MEDICAL MALPRACTICE INSURANCE CONSENT
TO RATE AND GUIDE "A" RATE AGREEMENTS
(TITLE 114, SERIES 59)

1. Authorizing statute(s) citation:

West Virginia Code §§ 33-2-10 and 33-20B-2(e)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

December 11, 2001

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of Public Hearing(s) or Public Comment Period ended:

Public comment period ended January 10, 2002.

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)

February 22, 2002

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Mary Jane Pickens, Associate Counsel
West Virginia Insurance Commission
Legal Division
P.O. Box 50540
Charleston, WV 25305-0540
Phone: (304) 558-0401
Fax: (304) 558-1362
E-mail: pickensm@mail.wvnet.edu

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Not applicable

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 or comment period:

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:

Not applicable

ATTACHMENT TO QUESTION 2(d):

One letter was received by the Insurance Commission concerning the Medical Malpractice Insurance Consent to Rate and Guide "a" Rate Agreements Rule during the comment period. The comments set forth in the letter are addressed below.

In a letter dated January 9, 2002, Medical Assurance of West Virginia pointed out that in the past the West Virginia Insurance Commissioner required that a filing fee and a self-addressed stamped return envelope accompany a consent to rate agreement filing. These requirements are set forth in Informational Letter No. 40, dated December, 1986, which requires a \$10.00 filing fee for consent to rate agreements filed pursuant to West Virginia Code Section 33-20-4(i). The Informational Letter also requires an original and one copy of the agreement to be filed, along with the return envelope. Medical Assurance has noted that the insurance industry would benefit from some clarification as to whether the filing fee and return envelope requirements would apply to filings under the new Medical Malpractice Insurance Consent to Rate and Guide "a" Rate Agreements Rule.

The Commissioner agrees that the omission from the Medical Malpractice Insurance Consent to Rate and Guide "a" Rate Agreements Rule was an oversight and should have been included in the rule. Therefore, the Commissioner will amend the rule to add these requirements to subsection 3.2 as follows:

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. The original and one copy of the application shall be filed and shall be accompanied by a filing fee of \$25.00 and a self-addressed postage prepaid envelope. Resubmission of a disapproved filing will require an additional filing fee. The filing fee shall be paid by the insurer and may not be passed on to the insured.

As a matter of practice, the Insurance Commission began to require a filing fee of \$25.00 rather than \$10.00 pursuant to Informational Letter No. 40. Therefore, the filing fee for a consent to rate or guide "a" rate agreement does not represent an increased fee.

Medical Assurance of West Virginia followed up its letter of January 9, 2002, with another letter that stated, upon further reflection, that it wished to make additional comments on the proposed rule. First, the suggestion was made that the form attached as Appendix A should include a statement near the applicant's signature that "Executing this form does NOT obligate the signator to purchase coverage from the insurer requesting utilization of the consent to rate or guide "a" rate agreement." The justification for this change is that some applicants believe that signing the form binds them to purchase the policy from the insurer. As a result, the applicant may take additional time to sign the form while he/she is considering the options. Medical Assurance suggests that the notice would hasten the applicant's completion of the form by clarifying that a signature does not bind the applicant to the purchase, and allow additional time for the insurer to then make the filing with the Insurance Commissioner. The Commissioner is in agreement with this suggested change and the form will include this notice near the signature line.

Similarly, Medical Assurance has commented that below the signature line on the form the words "Applicant's Signature" should appear rather than "Insured Signature." The Commissioner is in agreement, and the form will be changed accordingly.

MR
VK
MSP
1/12 Comments?
JJC

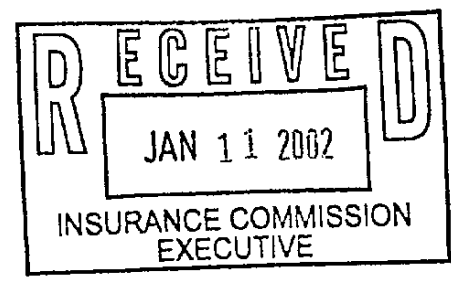


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JAN 14 2002

LEGAL DIVISION
W.VA. INS. DEPT.

January 9, 2002



Honorable Joseph Manchin
Secretary of State
State of West Virginia
State Capitol Building
Charleston, West Virginia

Re: West Virginia Emergency Legislative Rule
Insurance Commissioner
Series 59
Medical Malpractice Insurance
Consent-to-Rate and Guide "A" Rate Agreements

Dear Mr. Secretary:

As relates to the above, the Insurance Commissioner has in the past required that a \$25 filing fee and a self-addressed stamped envelope accompany such filings. The emergency rule is silent on this point.

The insurance industry would benefit from some clarification on whether the emergency rule would continue to include this requirement.

Very truly yours,

Stephen L. Brown, Director
Marketing and Policyholder Services

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JAN 10 2002

AGENTS LIC. & ED.
WV INS. COMM

Honorable Joseph Manchin
Secretary of State
January 9, 2002
Page 2

bcc: Jane C. Cline
Insurance Commissioner
Post Office Box 50541
Charleston, West Virginia 25305-0541

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JAN 10 2002

AGENTS LIC. & ED.
WV INS. COMM



February 1, 2002

RECEIVED

Mary Jane Pickens, Legal Division
Office of the Insurance Commissioner
Post Office Box 50540
Charleston, West Virginia 25305-0540

FEB 4 2002

LEGAL DIVISION
W.VA. INS. DEPT.

**Re: *West Virginia Emergency Legislative Rule
Insurance Commissioner
Services 59
Medical Malpractice Insurance
Consent-to-Rate and Guide "A" Rate Agreements***

Dear Ms. Pickens:

On further review of the above, we have found that two other items should be considered:

1. The applicant for insurance (in our case the potential insured) should be aware that he/she is not bound to purchase the coverage outlined by signing the Agreement Form. A notice of this matter would hasten the applicant's completion of the form and also allow for additional time for the insurer to make such a filing with the Insurance Commissioner, as some applicants believe, whether correctly or not, that signing the Agreement Form binds them to purchasing from the filing insurer. Since that is not the case, we suggest the following language be added near the applicant's signature "Executing this form does NOT obligate the signator to purchase coverage from the insurer requesting utilization of the consent-to-rate or guide "A" rate".
2. Secondly, we believe the applicant should not be referred to as an "Insured" for the same reasons as above; therefore, the reference to "Insured Signature" should be changed to "Applicant Signature".

Mary Jane Pickens, Legal Division
February 1, 2002
Page 2

If I can be of further assistance on this matter, please let us know.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen L. Brown". The signature is fluid and cursive, with the first name "Stephen" and last name "Brown" clearly distinguishable.

Stephen L. Brown, Director
Marketing and Policyholder Services

SLB:lap

cc: Mia Rowe, Director
Rates & Forms Division
Office of the Insurance Commissioner

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"

**TITLE 114
WEST VIRGINIA LEGISLATIVE RULE
INSURANCE COMMISSIONER**

FILED

2002 FEB 22 P 2:53

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

OFFICE OF THE SECRETARY OF STATE

§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.

**Insurance Commissioner
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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. The original and one copy of the application shall be filed and shall be accompanied by a filing fee of \$25.00 and a self-addressed postage prepaid envelope. Resubmission of a disapproved filing will require an additional filing fee. The filing fee shall be paid by the insurer and may not be passed on to the insured.

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.

**Insurance Commissioner
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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.

- (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.**

APPLICANT'S SIGNATURE _____

EXECUTING THIS FORM DOES NOT OBLIGATE THE SIGNATOR TO PURCHASE COVERAGE FROM THE INSURER REQUESTING UTILIZATION OF THE CONSENT TO RATE OR GUIDE "A" RATE AGREEMENT.

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.