

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

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OFFICE OF THE SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY Insurance Commission NUMBER: 114

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 RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 287

SECTION 64-7-1(j), PASSED ON March 7, 2003

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: April 3, 2003


Authorized Signature

PROMULGATION HISTORY

WEST VIRGINIA INSURANCE COMMISSION

TITLE

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

TITLE 114, SERIES 59

12/11/01	Notice of Comment Period Filed
1/10/02	Last Date Comments Were Received
2/22/02	Agency Approved Legislative Rule Filed
5/22/02	Date Reviewed by Legislative Rule-Making Review Committee
4/03/03	Filing Date
4/03/03	Effective Date

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**

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

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TITLE 114-59-1

§114-59-1. General.

1.1. 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.

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

1.3. Filing Date. -- April 3, 2003.

1.4. Effective Date. -- April 3, 2003.

1.5. 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.

§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. 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.

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.