

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

Form #3

Do Not Mark In This Box

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2004 AUG 26 P 2:45

OFFICE 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: WV Code §§33-2-10 and 33-41-10

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: 71

TITLE OF RULE BEING PROPOSED: Insurance Fraud Prevention

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

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: August 26, 2004

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: INSURANCE FRAUD PREVENTION
(TITLE 114, SERIES 71)

1. Authorizing statute(s) citation:

West Virginia Code §§ 33-2-10 and 33-41-10.

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

June 30, 2004 - Comment Period.

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

None

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

Comment period ended July 30, 2004.

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 26, 2004

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

Gregory A. Elam, Associate Counsel
West Virginia Insurance Commission
Legal Division
P.O. Box 50540
Charleston, WV 25305-0540
Phone: (304) 558-0401, Ext. 158
Fax: (304) 558-1362
E-mail: Greg.Elam@wvinsurance.gov

- 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

Insurance Commissioner
Title 114, Series 71

ATTACHMENT TO QUESTION 2 (d):

Two sets of comments were received during the comment period in response to the proposed legislative rule; one from T. Randolph Cox, on behalf of the American Insurance Association ("AIA"), and one from T. Randolph Cox, on behalf of the West Virginia Health Maintenance Organization Association ("HMO Association").

A. Mr. Cox submits the following comments on behalf of the AIA by letter dated and received on July 30, 2004:

1. Mr. Cox comments that the proposed regulations reference the NAIC Model Fraud Reporting Form (114-71-3.5). Mr. Cox comments that the current form is not attached to the regulations. Mr. Cox proposes for the purposes of convenience, it might be helpful if the current form is attached to the regulation and/or information where the current forms may be found be included in this regulation.

The Commissioner used the phrase "current version" to allow for the possibility of changes in the form. The form would become part of the rule if attached and would require a rule change to amend the form when modifications are required or would be misleading in the event a revised version is available. To avoid confusion or the possibility of tying the regulation to a specific form, the Commissioner amends subsection 3.5 to read as follows:

"The required information shall be submitted on a form prescribed by the commissioner."

B. Mr. Cox submits the following comments on behalf of the HMO Association by letter dated and received on July 30, 2004:

The HMO Association's comments were identical to the AIA comments. The response is the same as Section A.



SPILMAN THOMAS & BATTLE, PLLC
ATTORNEYS AT LAW

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JUL 30 04

LEGAL DIV.
WV INS. DEPT.

(304) 340-3829
tcox@spilmanlaw.com

July 30, 2004

HAND-DELIVERY

Mary Jane Pickens, Counsel
West Virginia Insurance Commission
1124 Smith Street
P. O. Box 50540
Charleston, West Virginia 25305-0540

Re: Comments to Series 3, Series 71, Series 72

Dear Ms. Pickens:

These comments are submitted on behalf of American Insurance Association ("AIA") to Series 3, 71 and 72. AIA is the country's leading property and casualty insurance trade organization, representing more than 450 insurers that write more than \$115 billion in premiums each year and who annually insure a substantial amount of automobile liability insurance in West Virginia.

SERIES 3

With regard to the proposed rules on cancellation and nonrenewal of automobile liability policies, Title 114, Series 3, AIA's members ask for certain points of clarification.

First, section 114-3-2, "Notice of Cancellation or Nonrenewal," provides that insurers "shall describe in detail the reason or reasons for issuance of the notice . . ." This is seemingly inconsistent with 33-6A-4(d) and 33-6A-4a(e) which state that the notice "shall state the specific reason or reasons . . ." So, while the statute requires a precise definition, the proposed regulation seemingly requires a broad "detail." Thus, AIA's members believe this aspect of the regulation may be at odds with the statute. Perhaps something specific, yet non-exclusive about what would be sufficient as "detail" may avoid future problems, though we would have to await review of any proposed language to make a final determination.

Second, AIA believes that Section 114-3-2 should end with language such as "Nothing in this regulation prevents the insurer from providing more information than what is required herein." Here, we have in mind that insurers may want flexibility to provide more information.

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Third, the Series 3 proposed regulations deal with the "Cancellation and Nonrenewal of Automobile Liability Policies." 114-3-2 provides that an insurer shall include the reason or reasons for the issuance of nonrenewal notice to an insured. Under existing law, a policy of insurance which has been in effect for less than two consecutive years is not subject to nonrenewal criteria and may be nonrenewed by an insurer for any reason. It is only after a policy has been in existence for two consecutive years or longer that an insurer is required to state a specific reason for nonrenewal. See, W. Va. Code § 33-6A-4(b). The proposed regulations do not appear to address the nonrenewal of a policy that has been in effect for less than one year and is non-renewed by the insurer who has not elected the alternative method of nonrenewal contained in Section 4(a).

Finally, these regulations should make clear that they only apply to private passenger automobile liability insurance policies and not commercial policies.

SERIES 71

Proposed Series 71 are entitled "Insurance Fraud Prevention." The proposed regulations reference the NAIC model Fraud Reporting Form (114-71-3.5). The current form is not attached to the regulations. For purposes of convenience, it might be helpful if the current form is attached to this regulation and/or information where the current forms may be found, i.e., website, are included in this regulation.

SERIES 72

The proposed rule, Title 114, Series 72, provides very broad authority to the regulator to establish rules on withdrawal and AIA has concerns this may be more than that contemplated in the statute. The statute provides, at 33-2-20(a), that the commissioner may authorize "an insurer to withdraw from the line of automobile liability insurance for personal, private passenger automobiles." Nonetheless, the definition of the "withdrawal" under the proposed rule appears to limit the standard of "withdrawal from the line." Under the proposal, "Withdrawal" means "the termination, cancellation, or nonrenewal of personal private passenger automobile liability or physical damage insurance. . . or policies of property insurance." See 114-72-2-2.3. In the absence of "line of" language, this regulation could arguably apply to each instance of termination, cancellation or nonrenewal.

The amendments to Article 6A in the 2004 legislation made reference to automobile liability or physical damages insurance. Article 6A only applies to private passenger automobile insurance and not commercial insurance policies. As a matter of clarification, these regulations

Mary Jane Pickens, Counsel
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only apply to personal and not commercial lines, private passenger automobile insurance, and the regulations should so provide.

AIA believes that court orders should also be included as instances when an insurer has not "acted on its own initiative" under 114-72-3-3.3. This is important because withdrawal plans are required when an insurer undertakes to withdraw. Since administrative orders are included in situations that are not considered acts of an insurer's own initiative, this is a straightforward and appropriate addition when one considers that court orders could result in non-voluntary acts.

AIA is concerned about the breadth of "services" insurers must reveal they will provide in the required "withdrawal plan" under 114-72-4-4.1.g. This is ambiguous and could result in substantial, even unreasonable service obligations. Without some reasonable limitation, AIA expects that this could result in unnecessary conflicts. It may be best to specifically state the services that are anticipated, so insurers may determine whether they are appropriate under the statute and proposed rule. In addition, under subsection n of the same provision, we are not sure that listing "the other programs and products the insurer will continue to "offer" is consistent with the statute's focus on "automobile liability insurance for personal, private passenger automobiles." If, as we imagine, the intent is to weigh whether withdrawal will be in the best interest of the insurer, and WV insureds, AIA is not sure how that will be accomplished given that these are different lines of insurance.

The regulations propose standards for insurers that withdraw a particular line in West Virginia. 114-72-4.1(o) provides that: "An affirmation that no new business will be solicited by the insurer in this state during or within three years subsequent to the filing of the withdrawal plan unless the commission waives this requirement." This three year requirement does not make clear that the new business is the same business which the insurer elects to nonrenew and withdraw. Second, there does not appear to be any statutory authority in either Article 17A or Article 6A to support this three year restriction, and therefore, it should be deleted.

Finally, the regulations establish other restrictions to re-entering into the market after an insurer has withdrawn. 114-72-7 provides, in pertinent part, that an insurer that has withdrawn from the state cannot resume writing that line of insurance unless it receives the "written approval of the Commissioner." The implication is that an insurer must comply with some requirement different than any other insurer if it wants to rewrite business. The standards for this "approval" are not set out in this rule, nor is this requirement established by either Article 6A or 17A. Absent the necessary statutory authority to require an insurer to meet "any different requirement" than any other insurer, this paragraph should be dropped. If it is included, the criteria or conditions for obtaining this approval should be included.

Mary Jane Pickens, Counsel
West Virginia Insurance Commission
July 30, 2004
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AIA greatly appreciates the consideration of these comments. We look forward to further dialogue as these proposals progress. In the interim, please do not hesitate to contact me us with any questions or concerns.

Sincerely yours,



T. Randolph Cox
Counsel, American Insurance Association

TRC/lb;317552

cc: R. Taylor Cosby
James J. Whittle



SPILMAN THOMAS & BATTLE, PLLC
ATTORNEYS AT LAW

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July 30, 2004

Mary Jane Pickens, Counsel
West Virginia Insurance Commission
1124 Smith Street
P. O. Box 50540
Charleston, West Virginia 25305-0540

Re: Comments to Series 15, Series 67, Series 71

Dear Ms. Pickens:

These comments are submitted on behalf of the West Virginia HMO Association to Series 15, Series 67 and series 71. The HMO Association is a state trade association consisting of the four licensed HMO's in West Virginia.

SERIES 15

Series 15 deals with amendments to the "Examiners Compensation Qualifications and Classification Examiners and Examination."

1. Section 4.2(a), (b) and (c), Section 4.3, and Section 4.6 require an insurer to maintain records for a period of five calendar years. These sections apply to health insurers. It appears that a health insurer should include health maintenance organizations.

Section 4.6 specifically applies to, among other things, complaint and grievance logs. West Virginia Code § 33-26A-12(k) provides that grievances and responses thereto shall be maintained for a period of three (3) years. The requirements of these sections are in conflict with the HMO Act and should be changed to three years for HMO's.

In the alternative, the five year requirement is a significant departure from the three year retention requirement currently employed by HMO's. At a minimum if this requirement is not amended to three years for HMO's, there should be a transition plan allowed for implementation.

2. Some of the definitions contained in this series concerning complaints and grievances are contrary to recently issued information letter 100A. This new information letter was a subject of much discussion between the Insurance Department and the WV HMO

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West Virginia Insurance Commission
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Association. The provisions of this section should be amended to not apply to HMO's or corrected to be consistent with Information Letter 100A.

3. Section 4.9(a) requires an HMO to provide any requested document within five working days. This time frame is unreasonable. These documents may be stored off-site. This will place an unnecessary burden and cost on HMO's to comply with this time frame. This time frame should be extended to a more reasonable time frame.

4. Finally, unlike other health insurers, HMO's are required to be accredited. They are audited annually on quality, appeals, credentialing, etc. These new requirements are expensive and duplicative. These additional administrative expenses will be borne ultimately by the consumer through increased rates. The Association would ask if the Department would consider some relief on these requirements given the already heavy regulatory burden on HMO's.

SERIES 67

The Series 67 proposed regulations introduced by the Insurance Commissioner deal with "Rate and Form Filing, Abstracts." Under the current regulations, group health insurance policies which are "negotiated and experience rated" are not subject to these filing requirements. This exception is established pursuant to W. Va. Code § 33-16B-3. Further, the current regulations define "experience rated groups." The proposed regulations appear to eliminate this exception.

The underlying legal authority for this exception still exists. For clarification purposes, the current exception for negotiated and experience rated groups should be specifically included under the proposed regulations. Group health policies which are negotiated and experience rated should not be required to submit a rate abstract for approval by the Commissioner.

SERIES 71

Proposed Series 71 are entitled "Insurance Fraud Prevention." The proposed regulations reference the NAIC model Fraud Reporting Form (114-71-3.5). The current form is not attached to the regulations. For purposes of convenience, it might be helpful if the current form is attached to this regulation and/or information where the current forms may be found be included with this regulation.

 SPILMAN THOMAS & BATTLE, PLLC
ATTORNEYS AT LAW

Mary Jane Pickens, Counsel
West Virginia Insurance Commission
July 30, 2004
Page 3

Thank you for your consideration of our comments. If you have any questions, please contact me.

Sincerely yours,



T. Randolph Cox
Counsel, West Virginia HMO Association

TRC/lb;317521

cc: Patrick W. Dowd
John A. Bellante
Philip W. Wright
John M. Collins

Insurance Commissioner
Legislative Rule
Title 114, Series 71

INSURANCE FRAUD PREVENTION

TITLE 114, SERIES 71

BRIEF SUMMARY OF RULE

The rule is a new series. H.B. 4004, which was passed March 11, 2004 and becomes effective June 11, 2004 created an insurance fraud unit within the Office of the Insurance Commissioner. The statute mandates reporting of suspected insurance fraud by insurers. The creation of Series 71 specifies the form to submit suspected insurance fraud to the Insurance Fraud Unit and requires insurers to designate an individual to be the contact for the insurance fraud unit.

Insurance Commissioner
Legislative Rule
Title 114, Series 71

INSURANCE FRAUD PREVENTION

TITLE 114, SERIES 71

STATEMENT OF CIRCUMSTANCES

H.B. 4004, which was passed March 13, 2004 and becomes effective June 11, 2004, amended Article 41 relating to privileges and immunities and created a fraud unit within the Office of the Insurance Commissioner. H.B. 4004 requires mandatory reporting of suspected insurance fraud by entities transacting insurance within the State of West Virginia. This creation of Series 71 specifies the form to submit suspected insurance fraud to the Insurance Fraud Unit and requires insurers to designate an individual to be the contact for the insurance fraud unit.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Insurance Fraud Prevention
Title 114, Series 71

Type of Rule: 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	2,000.00	None	None	2,000.00	2,000.00
PERSONAL SERVICES	2,000.00	None	None	2,000.00	2,000.00
CURRENT EXPENSE	None	None	None	None	None
REPAIRS AND ALTERNATIONS	None	None	None	None	None
EQUIPMENT	None	None	None	None	None
OTHER	None	None	None	None	None

2. Explanation of above estimates:

H.B. 4004 passed March 13, 2004 and effective June 11, 2004 created a fraud unit within the Office of the Insurance Commissioner. The bill requires the mandatory reporting of suspected fraud by entities transacting insurance. The above estimates reflect the cost of the personnel required to receive the mandated reports and log same.

3. Objectives of these rules: To specify the form to be used for reporting suspected insurance fraud and require the designation of a contact person for fraud reporting by entities transacting insurance.

Rule Title: Insurance Fraud Prevention
Title 114, Series 71

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

There is minimal economic impact on State Government.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

There is minimal or no economic impact on Political Subdivisions.

There is minimal impact on the insurance industry. This industry will incur the cost of reporting suspected insurance fraud. Many states already require this reporting and the industry already has the in house process to comply. There will be a new minimal cost of reporting to West Virginia.

There is no economic impact to Specific groups of Citizens.

C. Economic Impact on Citizens/Public at Large.

There is no economic impact on citizens and the public at large.

Date: August 26, 2004

Signature of Agency Head or Authorized Representative


Jane L. Cline, Insurance Commissioner

**114CSR71
LEGISLATIVE RULE
INSURANCE COMMISSIONER**

**SERIES 71
INSURANCE FRAUD PREVENTION**

Section

- 114-71-1. General.
- 114-71-2. Designation of Primary Contact.
- 114-71-3. Reporting of Insurance Fraud or Criminal Offenses Otherwise Related to the Business of Insurance.

114CSR71
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 71
INSURANCE FRAUD PREVENTION

FILED
2004 AUG 26 P 2:45
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§114-71-1. General.

- 1.1. Scope. -- This legislative rule establishes standards for reporting insurance fraud.
- 1.2. Authority. -- W. Va. Code §§33-2-10 and 33-41-10.
- 1.3. Filing Date. --
- 1.4. Effective Date. --

§114-71-2. Designation of Primary Contact.

2.1. Every insurer shall designate at least one (1) primary contact person but not more than four (4) primary contact persons who shall communicate with the Insurance Fraud Unit on matters relating to the reporting, investigation, and prosecution of suspected fraudulent insurance acts.

2.2. Every insurer shall notify the Insurance Fraud Unit in writing of the names, titles, addresses, and telephone numbers of the insurer's primary contact person or persons. Any changes to information relating to the contact person or persons must be reported to the Insurance Fraud Unit within ten (10) days of the changes.

§114-71-3. Reporting of Insurance Fraud or Criminal Offenses Otherwise Related to the Business of Insurance.

3.1. All persons identified in W. Va. Code §33-41-5(a) shall report in writing all suspected fraudulent insurance acts to the Insurance Fraud Unit.

3.2. The report shall be filed within fourteen (14) days of the determination by the reporter that a suspected fraudulent insurance act has been committed.

3.3. When a suspected fraudulent insurance act is reported, the following information, if known, shall be reported to the Insurance Fraud Unit:

- a. Date of preparation of the report.
- b. The following information about the reporting insurance company:

**Insurance Commissioner
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1. Name of insurance company;
 2. Telephone number and fax number of insurance company;
 3. Policy number or claim number; and
 4. Insurance policy type.
- c. The following information about the reporting person if not an insurance company:
1. Complete name;
 2. Occupation and title;
 3. Complete address; and
 4. Telephone number and fax number.
- d. The following information about the loss or occurrence:
1. Date of loss or occurrence;
 2. Location of loss including the complete address;
 3. Estimated value of claim for loss; and
 4. Whether claim was paid or not paid.
- e. The following information concerning the parties involved and their roles:
1. Complete names of all parties;
 2. Business and alias names of parties;
 3. Roles of each party;
 4. Complete address of each party;

Insurance Commissioner
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5. Phone number of each party;
6. Date of birth or age of each party;
7. Social Security number of each party;
8. Tax identification number of each party; and
9. Driver's license number of each party.

f. A detailed narrative of what fraudulent insurance act is suspected and why it is suspected.

g. List the type of documents in your possession, for example police reports, photographs, or falsified documents.

h. If you have reported the suspected fraudulent insurance act to some other agency or entity, identify the agency or entity by name, address, and telephone number.

3.4. The information provided must be signed and dated by the reporting party or an authorized representative of the reporting party.

3.5. The required information shall be submitted on a form prescribed by the commissioner.