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

Form #7 ☐

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Filing Date

FILED

2001 SEP 27 A 10: 32

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Board of Risk and Insurance Management TITLE NUMBER: 115

CITE AUTHORITY: W. Va. Code § 29-12-5c

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 4

TITLE OF RULE BEING AMENDED: Discontinuation of Professional Malpractice Insurance

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

PLEASE SEE ATTACHED

Use additonal sheets if necessary

Charles E. Jones Jr.

Authorized Signature

Title 115
Legislative Rules
Board of Risk and Insurance Management

EMERGENCY REPEAL OF SERIES 4 RULE TITLED:
DISCONTINUATION OF PROFESSIONAL MALPRACTICE INSURANCE

CONSENT TO FILING

I, Gregory A. Burton, Cabinet Secretary to the Department of Administration, do hereby consent to this filing of an emergency repeal of Title 115, Series 4, titled "Discontinuation of Professional Malpractice Insurance." The repeal of this regulation is required to assist physicians in obtaining available and affordable professional liability insurance.

9-26-01
Date

Gregory A. Burton
Gregory A. Burton, Cabinet Secretary
Department of Administration

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Pursuant to West Virginia Code Section 29-12-5c, the Board of Risk and Insurance Management ("BRIM") was authorized to promulgate rules and establish criteria for implementing a primary and excess layer of medical malpractice coverage for those medical practitioners who provide obstetric treatment to patients that is reimbursed or reimbursable by state Medicaid funds. However, upon conducting a survey of affected medical practitioners, it was determined that there was insufficient interest in participation to render the program economically feasible. Pursuant to the statute, BRIM, with the approval of the Insurance Commissioner, promulgated rules for the discontinuance of the program, 115 CSR 4. That rule was effective April 14, 1992.

Currently, a medical malpractice crisis exists in the State of West Virginia. Few carriers are actively writing coverage and, in many cases, that coverage is unaffordable, especially for some specialty practices such as obstetrics. Therefore, BRIM, at the direction of Governor Wise, and with the concurrence of the Insurance Commissioner, wishes to repeal Title 115, Series 4 in an effort to assist physicians in obtaining available and affordable medical professional liability insurance.

Board of Risk and Insurance Management
EMERGENCY RULE
Title 115, Series 4

DISCONTINUATION OF PROFESSIONAL MALPRACTICE INSURANCE

TITLE 115, SERIES 4

BRIEF SUMMARY OF RULE

Pursuant to West Virginia Code Section 29-12-5c, the Board of Risk and Insurance Management ("BRIM") was authorized to promulgate rules and establish criteria for implementing a primary and excess layer of medical malpractice coverage for those medical practitioners who provide obstetric treatment to patients that is reimbursed or reimbursable by state Medicaid funds. However, upon conducting a survey of affected medical practitioners, it was determined that there was insufficient interest in participation to render the program economically feasible. Pursuant to the statute, BRIM, with the approval of the Insurance Commissioner, promulgated rules for the discontinuance of the program, 115 CSR 4. That rule was effective April 14, 1992.

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Board of Risk and Insurance Management
EMERGENCY RULE
Title 115, Series 4

DISCONTINUATION OF PROFESSIONAL MALPRACTICE INSURANCE

TITLE 115, SERIES 4

STATEMENT OF CIRCUMSTANCES

Pursuant to West Virginia Code Section 29-12-5c, the Board of Risk and Insurance Management ("BRIM") was authorized to promulgate rules and establish criteria for implementing a primary and excess layer of medical malpractice coverage for those medical practitioners who provide obstetric treatment to patients that is reimbursed or reimbursable by state Medicaid funds. However, upon conducting a survey of affected medical practitioners, it was determined that there was insufficient interest in participation to render the program economically feasible. Pursuant to the statute, BRIM, with the approval of the Insurance Commissioner, promulgated rules for the discontinuance of the program, 115 CSR 4. That rule was effective April 14, 1992.

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APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Discontinuation of Professional Malpractice Insurance; Title 115, Series 4; EMERGENCY

Type of Rule: X Legislative ____ Interpretive ____ Procedural

Agency: WV Board of Risk and Insurance Management

Address: 4501 MacCorkle Avenue, SW
Ghannam Building - 3rd Floor
South Charleston, WV 25309
phone: 304-766-2646; fax: 304-766-2660

1. Effect of Proposed rule:

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$313,000		$347,500	$313,000	$322,500
PERSONAL SERVICES	$108,000		$81,000	$108,000	$113,500
CURRENT EXPENSE	$196,000		$203,500	$196,000	$200,000
REPAIRS & ALTERATIONS					
EQUIPMENT	$9,000		$63,000	$9,000	$9,000
OTHER					

2. Explanation of Above Estimates:

See Attachment A

3. Objectives of These Rules:

The objective of this emergency rule is to repeal the discontinuance of a program which allowed the Board of Risk and Insurance Management ("BRIM") to implement a primary and excess layer of medical malpractice coverage for those medical practitioners who provide obstetric treatment to patients that is reimbursed or reimbursable by state Medicaid funds. The repeal will permit BRIM to study the feasibility of such a program in an effort to address the medical malpractice crisis facing West Virginia.

Rule Title: Discontinuance of Professional Malpractice Insurance; Title 115; Series 4; EMERGENCY

4. Explanation of Overall Economic Impact of Proposed Rule:

   A. Economic Impact on State Government:

      4% premium tax will be given to general fund. Potential loss to Guaranty Fund up to 2% of premium.

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

      Loss of agents' commissions (6% to 13%) of premium.

   C. Economic Impact on Citizens/Public at Large.

      Will provide needed malpractice insurance to OB/GYNs, allowing them to stay in the state.

Date: 9/26/01

Signature of Agency Head or Authorized Representative:

Charles E. Jones Jr.

			Totals
Current Fiscal Year (Oct 2001-June 2002)			
Personal Services	1-Director	3,750 additional to current Director	
	2-Accountants	3,750 additional responsibility to existing employees	
	1-Office Assistant	15,000	
	Loss Control	33,750	
		3,750 additional responsibility to claim dept.	
		60,000	
	Matching Benefits (other)	21,000	
	Total Personal Services		81,000
	Current Expenses:		
	Travel & Training	3,750	
	Printing	750	
	Consulting Services	750	
	Office Expenses	2,250	
	Contract-Claims Adjusting	150,000	
	Audit Fees	10,000	
	Actuary(contract)	30,000	
	Car (leasing and expenses)	6,000	
	Total Current Expenses		203,500
	Equipment		
	Telecommunications	3,000	
	Computer Equipment	10,000	
	Computer Software	50,000	
	Total Equipment		63,000
TOTAL			**347,500**

West Virginia Board of Risk & Insurance Management

These expenses are in addition to current expenses

				Totals
First Full Year				
Personal Services	1-Director	5,000	additional to current Director	
	2-Accountants	5,000	additional responsibility to existing employees	
	1-Office Assistant	20,000		
	Loss Control	45,000		
		5,000	additional responsibility to claim dept.	
		80,000		
	Matching Benefits (other)	28,000		
	Total Personal Services			108,000
	Current Expenses:			
	Travel & Training	5,000		
	Printing	1,000		
	Consulting Services	1,000		
	Office Expenses	3,000		
	Contract-Claims Adjusting	150,000		
	Audit Fees	10,000		
	Actuary(contract)	20,000		
	Car (leasing and expenses)	6,000		
	Total Current Expenses			196,000
	Equipment			
	Telecommunications	3,000		
	Computer Equipment	1,000		
	Computer Software	5,000		
	Total Equipment			9,000
TOTAL				**313,000**

			Totals
Second Full Year			
Personal Services	1-Director	5,250 additional to current Director	
	2-Accountants	5,250 additional responsibility to existing employees	
	1-Office Assistant	21,000	
	Loss Control	47,250	
		5,250 additional responsibility to claim dept.	
		84,000	
	Matching Benefits (other)	29,500	
	Total Personal Services		113,500
	Current Expenses:		
	Travel & Training	5,000	
	Printing	1,000	
	Consulting Services	1,000	
	Office Expenses	3,000	
	Contract-Claims Adjusting	150,000	
	Audit Fees	12,000	
	Actuary(contract)	22,000	
	Car (leasing and expenses)	6,000	
	Total Current Expenses		200,000
	Equipment		
	Telecommunications	3,000	
	Computer Equipment	1,000	
	Computer Software	5,000	
	Total Equipment		9,000
TOTAL			**322,500**

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: September 27, 2001

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: BOARD OF RISK AND INSURANCE MANAGEMENT
4501 MacCorkle Avenue, S.W.
300 Ghannam Building
South Charleston, West Virginia 25309

EMERGENCY RULE TITLE: DISCONTINUATION OF PROFESSIONAL MALPRACTICE INSURANCE (Title 115, Series 4)

1. **Date of filing:**

   September 27, 2001

2. **Statutory authority for promulgating emergency:**

   W. Va. Code § 29-12-5c.

3. **Date of filing of proposed legislative rule:**

   September 27, 2001

4. **Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?**

   The emergency rule repeals a current legislative rule.

5. **Has the same or similar emergency rule previously been filed and expired?**

   No.

6. **State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety and welfare.**

Pursuant to West Virginia Code Section 29-12-5c, the Board of Risk and Insurance Management ("BRIM") was authorized to promulgate rules and establish criteria for implementing a primary and excess layer of medical malpractice coverage for those medical practitioners who provide obstetric treatment to patients that is reimbursed or reimbursable by state Medicaid funds. However, upon conducting a survey of affected medical practitioners, it was determined that there was insufficient interest in participation to render the program economically feasible. Pursuant to the statute, BRIM, with the approval of the Insurance Commissioner, promulgated rules for the discontinuance of the program, 115 CSR 4. That rule was effective April 14, 1992.

Currently, a medical malpractice crisis exists in the State of West Virginia. Few carriers are actively writing coverage and, in many cases, that coverage is unaffordable, especially for some specialty practices such as obstetrics. Therefore, BRIM, at the direction of Governor Wise, and with the concurrence of the Insurance Commissioner, wishes to repeal Title 115, Series 4 in an effort to assist physicians in obtaining available and affordable medical professional liability insurance. Without available and affordable health care, medical practitioners are likely to leave the state, leaving West Virginia citizens without sufficient health care.

7. **If the emergency rule was promulgated in order to comply with a time limit established by the Code of federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.**

Not applicable.

8. **State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to public interest.**

See answer to question #6.

~~TITLE 115~~

~~LEGISLATIVE RULE~~

~~BOARD OF RISK AND INSURANCE MANAGEMENT~~

FILED

2001 SEP 27 A 10: 32

OFFICE WEST VIRGINIA
SECRETARY OF STATE

~~SERIES 4~~

~~DISCONTINUATION OF PROFESSIONAL MALPRACTICE INSURANCE~~

~~§115-4-1. General.~~

~~1.1. Scope. -- This Legislative Rule provides for the discontinuation of the professional malpractice insurance program provided by W. Va. Code §29-12-5c, as amended by House Bill 4151, enacted March 10, 1990.~~

~~1.2. Authority. -- W. Va. Code §29-12-5c.~~

~~1.3. Filing Date. -- April 13, 1992~~

~~1.4. Effective Date. -- April 14, 1992~~

~~§115-4-2. Authority.~~

~~Pursuant to W. Va. Code §29-12-5c, if participation in the professional malpractice insurance program is insufficient to make the program economically feasible, then the program may be discontinued by rules and regulations promulgated by the Board of Risk and Insurance Management with approval of the Insurance Commissioner.~~

~~§115-4-3. Findings.~~

~~3.1. Survey. -- To determine the level of participation to be expected and the appropriate premium charge, on June 15, 1990 the Board of Risk and Insurance Management mailed the attached survey to 691 obstetricians, obstetricians/gynecologists and family practitioners. The survey was also mailed by the West Virginia Hospital Association to its members for emergency room practitioners to complete.~~

~~3.2. Survey Results. -- The attached survey results show that of the 691 plus medical practitioners surveyed, 509 did not respond or did not complete the survey. In particular, question #5 of the survey, asking if the practitioner would participate in a State liability program, was not answered. Of the 182 practitioners responding to question #5, only 65 indicated that they would participate in either an excess or primary liability program. Furthermore, at least twenty percent (20%) of the 65 responding in the affirmative to question #5 are already insured by the Board of Risk and Insurance Management, either as a State employee or an an employee of a non-profit clinic insured through the Public Entities Insurance Program.~~

~~3.3. Approval by Insurance Commissioner. -- Following a review of the survey, the Insurance Commissioner approved the discontinuation of the professional malpractice insurance program. The letter of approval is attached.~~

~~§115-4-4. Discontinuation of the Program.~~

~~Pursuant to W. Va. Code §29-12-5c, the Board of Risk and Insurance Management, with the approval of the Insurance Commissioner, hereby discontinues the professional malpractice insurance program.~~