WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Risk And Insurance Management

TITLE-SERIES: 115-02

RULE TYPE: Legislative

Amendment to Existing Rule: Yes

Repeal of existing rule: No

RULE NAME: Public Entities Insurance Program

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

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 08/08/2020 5 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Mary Jane Pickens, Director

ADDRESS: BRIM, 1124 Smith Street, Suite 4300

Charleston, WV 25301

EMAIL: maryjane.pickens@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The rule sets forth procedures and requirements supporting BRIMs program of liability and property insurance for public subdivisions, charitable organizations, and emergency medical service agencies. BRIM was established as an alternative market for these coverages for political subdivisions and charitable organizations in 1986 when Governor Moore declared an emergency resulting from the inability of these entities to obtain these coverages in the commercial market and the negative impact on services for our citizens. Governor Moores executive order followed the Legislatures passage of SB 3, authorizing BRIM to provide these coverages to these entities. BRIM is not a competitor to the private market, but rather is available when needed due to the cyclical nature of liability insurance, and this rule supports the program

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

The rule has become outdated since its last update in 2005. The changes modify the rule to reflect modern underwriting procedures and methods of submission of information in addition to clarifying the calculation and payment of producer commissions, and generally updating the rule.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

BRIM does not anticipate any immediate or long-range increases or decreases in personal services, current expenses, repairs and alterations, assets, other costs and revenues. This is an existing program and amendments to the rule will modernize it but will not impact the program operations otherwise.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Misty Peal -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 115
LEGISLATIVE RULES
STATE BOARD OF RISK AND INSURANCE MANAGEMENT

SERIES 2
PUBLIC ENTITIES INSURANCE PROGRAM

§115-2-1. General.

1.1. Scope. -- This rule establishes the procedures for implementing and administering the public entities insurance program ~~as~~ established ~~by~~ pursuant to W. Va. Code §§29-12-5(b) and 29-12A-1 et seq. The purpose of the program is to provide liability insurance coverage and property insurance coverage to eligible and qualified political subdivisions, charitable or public service organizations and emergency medical service agencies.

1.2. Authority. -- W. Va. Code §§29-12-5~~(a), 29-12-14.~~

1.3. Filing Date. -- ~~May 13, 2005.~~

1.4. Effective Date. -- ~~July 1, 2005.~~

1.5. Sunset Provision -- This rule shall terminate and have no further force and effect upon the expiration of seven years from its effective date.

§115-2-2. Definitions.

2.1. "Board" means the state board of risk and insurance management.

2.2. "Entity" means the political subdivisions, charitable or public service organizations and emergency medical service agencies requesting or obtaining liability or property insurance.

2.3. ~~"Agent" means a resident property and casualty agent currently licensed as such by the state insurance commissioner.~~ "Producer" means a person licensed by the West Virginia Insurance Commissioner under the laws of West Virginia to sell, solicit or negotiate property and casualty insurance.

2.4. ~~"Information packet" means the questionnaire, survey, or any other underwriting data that may be requested by the board and furnished to the entity or agent.~~

~~2.5.~~ "Fee agreement" means the ~~document and/or agreement provided to the entity or agent for the purpose of paying the agent a service fee.~~ agreement between the entity and producer designating the producer as producer of record for the entity and authorizing the board to pay the producer of record the commission established in the agreement.

~~2.6. "Service fee" means the data acquisition cost and/or commission which shall be no greater than eight percent of the annual earned premium charged to the entity.~~

§115-2-3. Designation of ~~Agent~~ Producer of Record.

3.1. ~~Each entity which seeks to procure liability and/or property insurance through the board shall use a resident licensed property and casualty insurance agent pursuant to W. Va. Code §33-12-1 et" seq".~~

An entity may not procure or renew insurance through the public entities insurance program unless it does so through a producer who has entered into a fee agreement with the entity. Failure to comply with this requirement will result in declination of the entity's application for coverage or non-renewal of existing coverage.

~~3.2. The entity shall designate an agent of record in writing to the board either by signed letter or signed fee agreement.~~

~~3.3. Failure by an entity to comply with the requirements of subdivisions 3.1 or 3.2 will result in non-acceptance of an entity or non-renewal of an entity in the public entities insurance program.~~

~~3.4.~~3.2. The board shall ~~furnish an information packet to the entity's agent of record.~~ provide all forms, documents and instructions necessary to apply for coverage to the entity's producer of record upon request by the entity or the producer of record. The entity and its ~~agent~~ producer of record are jointly responsible for submitting ~~the information packet completed~~ all forms, documents, and underwriting information needed to apply for coverage in a manner and within a time period acceptable to the board.

3.3. Before the end of December during each fiscal year, the board will provide notification to producers of record of the date by which the underwriting questionnaire and any other information needed for renewal of existing coverage is due for the next fiscal year. The notification will be sent at least 45 days prior to the date the underwriting questionnaire and other information is due. If the underwriting questionnaire or any other information needed for renewal of any coverage is not received by the designated date, the board will issue a written non-renewal notice informing the entity that coverage will cease on July 1 at 12:01 AM if the entity fails to take further action.

3.3.1 The non-renewal notice will also provide a date by which the underwriting questionnaire or other information will still be accepted by the board as a late submission, and will state that submission of the underwriting questionnaire or other information after the late submission date but before July 1 will result in an assessment of $500.00. The board may assess the penalty of $500.00 against any entity that submits the needed renewal information after the late submission date provided in the non-renewal notice and before July 1.

3.3.2. As stated in the non-renewal notice, coverage will cease on July 1 at 12:01 AM for any entity that fails to submit the underwriting questionnaire or other information needed for renewal by June 30 and pay a $500.00 late submission penalty. Should the entity desire to procure coverage through the public entities insurance program during the year following non-renewal it will be required to apply for coverage as a new entity and pay a penalty of $500.00, however, this penalty shall not apply if the non-renewal was due to the entity's decision to procure coverage other than through the program.

~~3.5. The board may refer to the state insurance commissioner for disciplinary action any agent of record who fails to satisfactorily complete the information packet.~~

~~3.6. The board may ask the entity to designate another agent of record if its agent fails to satisfactorily complete the information packet.~~

§115-2-4. Service Fee.

4.1. ~~The board shall include an amount designated as a service fee in the insurance premium charged to the entity. These moneys may be used to defray administrative expenses incurred as a result of the acquisition of underwriting data by the board. These moneys may be forfeited to the board to defray expenses incurred by the board as a result of the submission by the entity and/or agent of record of~~

~~information and data not completed in a manner acceptable to the board.~~ The board's administrative costs associated with operation of the public entities insurance program will be included in the actuarial model for determination of premium due from insured entities.

~~4.2. The service fee cost is an amount equal to eight percent of the annual earned premium charged the entity for insurance coverage.~~

§115-2-5. ~~Commission of Agent of Record.~~ Producer's Commission.

5.1. The amount of the producer of record's commission ~~or fee of the agent of record~~ is a matter ~~to be resolved~~ of agreement between the entity and its ~~agent~~ producer of record and established in the fee agreement.

5.2. The commission ~~of the agent of record shall~~ may not exceed eight percent of the earned annual premium. The earned premium will be computed on an annual basis of July 1 of each year to June 30 of the following year. The difference between the maximum of 8% and the producer of record's commission shall be credited to the entity's account. Commission is based on premium paid by the entity for the policy year. In the event that coverage is canceled during the term of the policy, the commission will be based on premium paid for the period of time the insurance was in force.

5.3. The entity may change its producer of record and/or the amount of commission to be paid to the producer by notification to the board and submission of a new fee agreement. Commission will be paid to the producer of record annually following the end of the policy year for which the producer completed the underwriting questionnaire for the entity. Should the entity change its producer of record during a policy year, the commission for that policy year will only be paid to the producer who completed the underwriting questionnaire for the entity for that policy year.

§115-2-6. Ineligible Classes.

6.1. The following classes of entities have been determined by the board to be ineligible for coverage under W. Va. Code §29-12-5(b):

~~a.~~6.1.1. Hospitals - except those owned and operated by political subdivisions already insured with the state program, or critical access hospitals as specified in W. Va. Code §29-12-5(b);

~~b.~~6.1.2. Airports and airport authorities.

~~c.6.1.3.~~ Churches and religious organizations.

~~d.~~6.1.4. Country clubs.

~~e.~~6.1.5. Homeowners associations.

~~f.~~6.1.6. Lobbying organizations.

~~g.~~6.1.7. Political organizations.

~~h.~~6.1.8. Any "for profit" organizations, except emergency medical service agencies as specified in W. Va. Code §29-12-5(b). "For profit" organizations includes any for profit organization that may be owned in full or in part by an otherwise eligible entity.

~~6.2. If any entity listed in subsection 6.1 of this section is insured in the public entity insurance program, the board shall renew its coverage; however, the board shall not accept any entity in said ineligible classes after February 1, 1988.~~

§115-2-7. Rates and Coverages.

7.1. The board shall determine and establish rates, rate programs, deductibles, and coverages as needed.

7.2. An entity may procure liability insurance through the public entities insurance program without also procuring property insurance. However, property insurance may only be procured if the entity also procures liability insurance through the public entities insurance program.

§115-2-8. Cancellation and Nonrenewal Provisions.

8.1. The board may cancel or non-renew an entity's insurance coverage for any of the following reasons:

8.1.1.~~a.~~ The entity's failure to make a premium payment within thirty (30) days of the premium due date;

8.1.2.~~b.~~ Fraud or substantial misrepresentation by the entity or a representative of the entity procuring or ~~continuing~~ renewing the insurance coverage or in presenting a claim under the insurance coverage;

8.1.3.~~c.~~ A substantial increase in the risk of loss to which the public entity insurance program is exposed under the policy, including, but not limited to, the following:

8.1.3.a.~~c.1.~~ The conviction of the entity ~~or a representative of the entity~~ or any officer, employee, or volunteer of the entity of any crime having as one of its necessary elements an act increasing any hazard insured against;

8.1.3.b.~~c.2.~~ Discovery of willful or reckless acts or omissions on the part of any officer, employee or volunteer of the entity which substantially increases any hazard insured against;

8.1.3.c.~~c.3.~~ The occurrence of a change in the risk which substantially increases any hazard insured against after insurance coverage has been issued or renewed;

8.1.3.d.~~c.4.~~ The entity has a loss ratio exceeding one hundred percent in at least three of the past five years in the program; ~~or~~

8.1.3.e.~~c.5.~~ The entity's violation of any local fire, health, safety, building or construction regulation or ordinance with respect to any insured property or the occupancy thereof which substantially increases any hazard insured against;

8.1.4.~~d.~~ The entity violates any of the material terms or conditions of the insurance coverage or the public entity insurance program; or

8.1.5.~~e.~~ The entity no longer qualifies for participation in the public entity insurance programs administered by the board.

8.2. The board shall give an entity at least a thirty (30) day notice of cancellation of coverage by written notice to the entity by certified mail, return receipt requested. The notice shall comply with the requirements of section 8.4 of these rules.

8.3. The board shall renew an entity's insurance coverage, unless at least sixty (60) days prior to the date of the expiration provided in the certificate of coverage, the board provides the entity with a written notice, by certified mail, return receipt requested, of its intention not to renew the insurance coverage beyond the expiration date. The notice shall comply with section 8.4 of these rules unless the entity is insured elsewhere, has accepted replacement coverage, or has requested or agreed to the nonrenewal.

8.4. In every instance in which insurance coverage is cancelled or is not renewed, the board shall cite within the written notice of the action the reason or reasons set forth in section 8.1 of this rule for which the action was taken and shall state with specificity the circumstances giving rise to the board's action. The notice shall further state that the entity has a right to appeal the determination pursuant to section 8.6 of this rule, and the right to be represented by counsel during such appeal. ~~as specified in the fee agreement.~~

8.5. ~~Upon cancellation of a policy, the entity's agent of record shall refund commissions on the return premium to the board at the same rate at which such commissions were paid.~~

~~8.6.~~ Any entity whose coverage has been cancelled or nonrenewed, may appeal the decision to the board by filing a written petition for appeal, conforming to the procedural rules promulgated by the board within fifteen (15) calendar days of receipt of the notice of cancellation or nonrenewal.