

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 4400**

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[Originating in the Committee on the Judiciary;

February 13, 2018.]



1 A BILL to repeal §33-20F-6 of the Code of West Virginia, 1931, as amended, and to amend and  
2 reenact §33-20F-3, §33-20F-5, and §33-20F-9 of said code, all relating to the West  
3 Virginia Physicians Mutual Insurance Company; removing language that is no longer  
4 relevant to the operation of the company as a private mutual insurance company; and  
5 adding language to accommodate policies written to physicians outside the State of West  
6 Virginia.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 20F. PHYSICIANS' MUTUAL INSURANCE COMPANY.**

**§33-20F-3. Definitions.**

1 For purposes of this article, the term:

2 (a) "Board of medicine" means the West Virginia Board of Medicine as provided in §30-3-  
3 5 of this code.

4 (b) "Board of Osteopathy" means the West Virginia Board of Osteopathy as provided in  
5 §30-14-3 of this code.

6 (c) "Commissioner" means the Insurance Commissioner of West Virginia as provided in  
7 §33-2-1 of this code.

8 (d) "Company" means the Physicians' Mutual Insurance Company created pursuant to the  
9 terms of this article.

10 (e) "Medical liability insurance" means, for the purposes of this article: All policies  
11 previously issued by the Board of Risk and Insurance Management pursuant to §29-12B-1 *et seq.*  
12 of this code which are transferred by the Board of Risk and Insurance Management to the  
13 company, pursuant to §33-20F-9(b) of this code and all policies of insurance subsequently issued  
14 by the company to physicians, physician corporations, physician-operated clinics, and such other  
15 individual health care providers as the commissioner may, upon written application of the  
16 company, approve.

17 (f) "Physician" means an individual who is licensed by the Board of Medicine or the Board  
18 of Osteopathy to practice medicine or podiatry in West Virginia, or who is licensed by a licensing  
19 board or body in another state to practice medicine or podiatry.

20 (g) "Transfer date" means the date on which the assets, obligations, and liabilities resulting  
21 from the Board of Risk and Insurance Management's issuance of medical liability policies to  
22 physicians, physician corporations, and physician-operated clinics pursuant to §29-12B-1 *et seq.*  
23 of this code are transferred to the company.

**§33-20F-5. Governance and organization.**

1 (a) ~~(1)~~ The Board of Risk and Insurance Management shall implement the initial formation  
2 and organization of the company as provided by this article.

3 ~~(2) From July 1, 2003, until June 30, 2004, the company shall be governed by a provisional~~  
4 ~~board of directors consisting of the members of the board of Risk and Insurance Management,~~  
5 ~~the Dean of the West Virginia University School of Medicine or a physician representative~~  
6 ~~designated by him or her and five physician directors elected by the policyholders whose policies~~  
7 ~~are to be transferred to the company pursuant to section nine of this article.~~

8 ~~(3) Only physicians who are licensed to practice medicine in this state pursuant to §30-3-~~  
9 ~~1 *et seq.* or §30-14-1 *et seq.* of this code and who have purchased medical professional liability~~  
10 ~~coverage from the board of Risk and Insurance Management are eligible to serve as physician~~  
11 ~~directors on the provisional board of directors. One of the physician directors shall be selected~~  
12 ~~from a list of three physicians nominated by the West Virginia Medical Association. The Board of~~  
13 ~~Risk and Insurance Management shall develop procedures for the nomination of the remaining~~  
14 ~~physician directors and for the conduct of the election, to be held no later than June 1, 2003, of~~  
15 ~~all of the physician directors, including, but not limited to, giving notice of the election to the~~  
16 ~~policyholders. These procedures shall be exempt from the provisions of article three, chapter~~  
17 ~~twenty-nine-a of this code.~~

18 (b) ~~From July 1, 2004~~ The company shall be governed by a board of directors consisting  
19 of 11 directors, as follows:

20 (1) ~~Five~~ Six directors who are physicians licensed to practice medicine in this state by the  
21 Board of Medicine or the Board of Osteopathy, including at least one general practitioner and one  
22 specialist: *Provided*, That only physicians who have purchased medical professional liability  
23 coverage from the Board of Risk and Insurance Management are eligible to serve as physician  
24 representatives on the company's first board of directors;

25 (2) Three directors who have substantial experience as an officer or employee of a  
26 company in the insurance industry;

27 (3) Two directors with general knowledge and experience in business management who  
28 are officers and employees of the company and are responsible for the daily management of the  
29 company; and

30 ~~(4) One director who is a dean of a West Virginia school of medicine or osteopathy or his~~  
31 ~~or her designated physician representative. This director's position shall rotate annually among~~  
32 ~~the Dean of the West Virginia University School of Medicine, the Dean of the Marshall University~~  
33 ~~Jean C. Edwards School of Medicine, and the Dean of the West Virginia School of Osteopathic~~  
34 ~~Medicine. This director shall serve until such time as the moneys loaned to the company from the~~  
35 ~~West Virginia Tobacco Settlement Medical Trust Fund have been replenished as provided in~~  
36 ~~§§33-20F-4(e), of this code. After the moneys have been replenished to the West Virginia~~  
37 ~~Tobacco Settlement Medical Trust Fund, this director shall be a physician licensed to practice~~  
38 ~~medicine in this state by the Board of Medicine or the Board of Osteopathy.~~

39 (c) In addition to the eleven directors required by subsection (b) of this section, the bylaws  
40 of the company may provide for the ~~addition~~ election of at least two additional directors. ~~who~~  
41 ~~represent an entity or institution which lends or otherwise provides funds to the company~~

42 (d) The directors and officers of the company are to be chosen in accordance with the  
43 articles of incorporation and bylaws of the company. The initial board of directors selected in

44 accordance with the provisions of subdivision (3), subsection (a) of this section shall serve for the  
45 following terms: (1) Three for four-year terms; (2) three for three-year terms; (3) three for two-year  
46 terms; and (4) two for one-year terms. Thereafter, the Directors shall serve staggered terms of  
47 four years. If an additional director is added to the board as provided in subsection (c) of this  
48 section, his or her initial term shall be for four years.

49 (e) The incorporators are to prepare and file articles of incorporation and bylaws in  
50 accordance with the provisions of this article and the provisions of this chapter and chapter thirty-  
51 one of this code.

**§33-20F-6. Management and administration of the company.**

1 [Repealed]

**§33-20F-9. Kinds of coverage authorized; transfer of policies from the state Board of Risk  
and Insurance Management; risk management practices authorized.**

1 (a) Upon approval by the commissioner for a license to transact insurance in this state,  
2 the company may issue nonassessable policies of malpractice insurance, as defined in §33-1-10  
3 (e)(9) of this code, insuring a physician. Additionally, the company may issue other types of  
4 casualty or liability insurance as may be approved by the commissioner.

5 (b) On the transfer date:

6 (1) The company shall accept from the Board of Risk and Insurance Management the  
7 transfer of any and all medical liability insurance obligations and risks of existing or in-force  
8 contracts of insurance covering physicians, physician corporations, and physician-operated  
9 clinics issued by the board pursuant to §29-12B-1 *et seq.* of this code: *Provided,* That the  
10 company may decline or refuse to renew any and all such contracts of insurance transferred to  
11 the company from the Board of Risk and Insurance Management upon the expiration of the  
12 respective terms of each contract of insurance so transferred and nothing in this section is  
13 intended to or shall be construed to otherwise obligate the company to accept, underwrite or  
14 renew any contract of insurance whatsoever. The transfer shall not include medical liability

15 insurance obligations and risks of existing or in-force contracts of insurance covering hospitals  
16 and nonphysician providers;

17 (2) The company shall assume all responsibility for and defend, indemnify, and hold  
18 harmless the Board of Risk and Insurance Management and the state with respect to any and all  
19 liabilities and duties arising from the assets and responsibilities transferred to the company  
20 pursuant to §29-12B-1 *et seq.* of this code;

21 (3) The Board of Risk and Insurance Management shall disburse and pay to the company  
22 any funds attributable to premiums paid for the insurance obligations transferred to the company  
23 pursuant to subdivision (1) of this subsection, with earnings thereon, less paid losses and  
24 expenses, and deposited in the Medical Liability Fund created by §29-12B-1 *et seq.* of this code  
25 as reflected on the ledgers of the Board of Risk and Insurance Management;

26 (4) The Board of Risk and Insurance Management shall disburse and pay to the company  
27 any funds in the Board of Risk and Insurance Management Physicians' Mutual Insurance  
28 Company account created by §33-20F-7 of this code. All funds in this account shall be transferred  
29 pursuant to terms of a surplus note or other loan arrangement satisfactory to the Board of Risk  
30 and Insurance Management and the Insurance Commissioner.

31 (c) The Board of Risk and Insurance Management shall cause an independent actuarial  
32 study to be performed to determine the amount of all paid losses, expenses and assets associated  
33 with the policies the board has in force pursuant to §29-12B-1 *et seq.* of this code. The actuarial  
34 study shall determine the paid losses, expenses and assets associated with the policies to be  
35 transferred to the company pursuant to subsection (b) of this section and the paid losses,  
36 expenses and assets associated with those policies retained by the board. The determination  
37 shall not include liabilities created by issuance of new tail insurance policies for nonphysician  
38 providers authorized by §29-12B-6 (n) of this code.

39 (d) The Board of Risk and Insurance Management may enter into such agreements,  
40 including loan agreements, with the company that are necessary to accomplish the transfers  
41 addressed in this section.

42 (e) The company shall make policies of insurance available to physicians in this state,  
43 regardless of practice type or specialty. Policies issued by the company to each class of  
44 physicians are to be essentially uniform in terms and conditions of coverage.

45 (f) Notwithstanding the provisions of subsection (b), (c) or (e) of this section, the company  
46 may:

47 (1) Establish reasonable classifications of physicians, insured activities, and exposures  
48 based on a good faith determination of relative exposures and hazards among classifications;

49 (2) Vary the limits, coverages, exclusions, conditions, and loss-sharing provisions among  
50 classifications;

51 (3) Establish, for an individual physician within a classification, reasonable variations in  
52 the terms of coverage, including rates, deductibles, and loss-sharing provisions, based on  
53 underwriting criteria established by the company, from time to time, which underwriting criteria  
54 may take into account factors considered by other medical malpractice insurance companies,  
55 from time to time, in underwriting similar risks and which factors may include, but are not limited  
56 to, the insured's prior loss experience; current professional training and capability; disciplinary  
57 action taken against the physician by the Board of Medicine, ~~or Board of Osteopathy~~ or a licensing  
58 board or body of another state in which the physician has been licensed; felonies or other criminal  
59 offenses committed by the physician; evidence of alcohol or chemical dependency or abuse;  
60 evidence of sexual misconduct; and any other factors relevant to the liability risk profile of the  
61 physician.

62 (4) Refuse to provide insurance coverage for individual physicians who do not meet  
63 underwriting criteria established by the company, from time to time, which underwriting criteria  
64 may take into account factors considered by other medical malpractice insurance companies,

65 from time to time, in underwriting or declining to underwrite similar risks and which factors may  
66 include, but are not limited to, prior loss experience, current professional training and capability,  
67 disciplinary action taken against the physician by the Board of Medicine, ~~or~~ Board of Osteopathy  
68 or a licensing board or body of another state in which the physician has been licensed; felonies  
69 or other criminal offenses committed by the physician; evidence of alcohol or chemical  
70 dependency or abuse; evidence of sexual misconduct; and any other factors relevant to the  
71 liability risk profile of the physician and which do or may indicate that the physician represents an  
72 unacceptable risk of loss if coverage is provided.

73 (g) The company shall establish reasonable risk management and continuing education  
74 requirements which policyholders must meet in order to be and remain eligible for coverage.