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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SIXTH EXTRAORDINARY SESSION, 2001



ENROLLED

Committee Substitute for Committee Substitute for

SENATE BILL NO. 6014

*(By Senators Tomblin, Mr. President, and
Sprouse, by Request of the Executive)*



PASSED November 6, 2001

In Effect From Passage

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COMMITTEE SUBSTITUTE

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Senate Bill No. 6014

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed November 6, 2001; in effect from passage.]

AN ACT to amend and reenact sections two, three, six and eight, article twenty-b, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two, three and four, article twenty-c of said chapter, all relating to medical malpractice liability insurance; modifying factors considered for establishing insurance rates; creating a prohibition for the use of certain nonapproved rates; prohibiting insurers from requiring execution of certain rate endorsements and creating exceptions thereto; extending waiting period for certain filings; modifying methodology for determining when subsequent reporting violations occur; expanding entities required to report claims made against health care

providers; extending the time frame to report certain claims; adding information relating to certain claims which must be reported to the insurance commissioner; modifying the method that insurance commissioner may assess and dispose of civil penalties; removing a reason an insurer may use to cancel an existing insurance policy; and extending date of notice required of an insurer for nonrenewal of an insurance policy or contract.

Be it enacted by the Legislature of West Virginia:

That sections two, three, six and eight, article twenty-b, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections two, three and four, article twenty-c of said chapter be amended and reenacted, all to read as follows:

ARTICLE 20B. RATES AND MALPRACTICE INSURANCE POLICIES.

§33-20B-2. Ratemaking.

1 Any and all modifications of rates shall be made in
2 accordance with the following provisions:

3 (a) Due consideration shall be given to the past and
4 prospective loss experience within and outside this state.

5 (b) Due consideration shall be given to catastrophe
6 hazards, if any, to a reasonable margin for underwriting
7 profit and contingencies, to dividends, savings or unab-
8 sorbed premium deposits allowed or returned by insurers
9 to their policyholders, members or subscribers and actual
10 past expenses and demonstrable prospective or projected
11 expenses applicable to this state.

12 (c) Rates shall not be excessive, inadequate or unfairly
13 discriminatory.

14 (d) Risks may not be grouped by territorial areas for the
15 establishment of rates and minimum premiums.

16 (e) An insurer may use guide "A" rates and other
17 nonapproved rates, also known as "consent to rates":

18 *Provided*, That the insurer shall, prior to entering into an
19 agreement with an individual provider or any health care
20 entity, submit guide “A” rates and other nonapproved
21 rates to the commissioner for review and approval:
22 *Provided, however*, That the commissioner shall propose
23 legislative rules for promulgation in accordance with the
24 provisions of article three, chapter twenty-nine-a of this
25 code, which set forth the standards and procedure for
26 reviewing and approving guide “A” rates and other
27 nonapproved rates. No insurer may require execution of
28 a consent to rate endorsement for the purpose of offering
29 to issue or issuing a contract or coverage to an insured or
30 continuing an existing contract or coverage at a rate in
31 excess of that provided by a filing otherwise applicable.

32 (f) Except to the extent necessary to meet the provisions
33 of subdivision (c) of this section, uniformity among
34 insurers, in any matters within the scope of this section, is
35 neither required nor prohibited.

36 (g) Rates made in accordance with this section may be
37 used subject to the provisions of this article.

§33-20B-3. Rate filings.

1 (a) Every filing for malpractice insurance made pursuant
2 to subsection (a), section four, article twenty of this
3 chapter shall state the proposed effective date of the filing,
4 the character and extent of the coverage contemplated and
5 information in support of the filing. The information
6 furnished in support of a filing shall include: (i) The
7 experience or judgment of the insurer or rating organiza-
8 tion making the filing; (ii) its interpretation of any statisti-
9 cal data the filing relies upon; (iii) the experience of other
10 insurers or rating organizations; and (iv) any other rele-
11 vant factors required by the commissioner. When a filing
12 is not accompanied by the information required by this
13 section upon which the insurer supports the filing, the
14 commissioner shall require the insurer to furnish the
15 information and, in that event, the waiting period pre-

16 scribed by subsection (b) of this section shall commence as
17 of the date the information is furnished.

18 A filing and any supporting information shall be open to
19 public inspection as soon as the filing is received by the
20 commissioner. Any interested party may file a brief with
21 the commissioner supporting his or her position concern-
22 ing the filing. Any person or organization may file with
23 the commissioner a signed statement declaring and
24 supporting his or her or its position concerning the filing.
25 Upon receipt of any such statement prior to the effective
26 date of the filing, the commissioner shall mail or deliver a
27 copy of the statement to the filer, which may file a reply.
28 This section is not applicable to any memorandum or
29 statement of any kind by any employee of the commis-
30 sioner.

31 (b) Every filing shall be on file for a waiting period of
32 ninety days before it becomes effective. The commissioner
33 may extend the waiting period for an additional period not
34 to exceed thirty days if he or she gives written notice
35 within the waiting period to the insurer or rating organi-
36 zation which made the filing that he or she needs the
37 additional time for the consideration of the filing. Upon
38 written application by the insurer or rating organization,
39 the commissioner may authorize a filing which he or she
40 has reviewed to become effective before the expiration of
41 the waiting period or any extension of the waiting period.
42 A filing shall be deemed to meet the requirements of this
43 article unless disapproved by the commissioner within the
44 waiting period or any extension thereof.

45 (c) No insurer shall make or issue a contract or policy of
46 malpractice insurance except in accordance with the
47 filings which are in effect for the insurer as provided in
48 this article.

§33-20B-6. Rate review and reporting.

1 (a) The commissioner shall review annually the rules,
2 rates and rating plans filed and in effect for each insurer

3 providing five percent or more of the malpractice insur-
4 ance coverage in this state in the preceding calendar year
5 to determine whether the filings continue to meet the
6 requirements of this article and whether the filings are
7 unfair or inappropriate given the loss experience in this
8 state in the preceding year.

9 The commissioner shall promulgate legislative rules
10 pursuant to article three, chapter twenty-nine-a of this
11 code establishing procedures for the fair and appropriate
12 evaluation and determination of the past loss experience
13 and prospective or projected loss experience of insurers
14 within and outside this state, actual past expenses in-
15 curred in this state and demonstrable prospective or
16 projected expenses applicable to this state.

17 (b) The commissioner shall promulgate legislative rules
18 pursuant to article three, chapter twenty-nine-a of this
19 code establishing procedures whereby each insurer
20 providing five percent or more of the malpractice insur-
21 ance coverage in this state annually shall submit to the
22 commissioner the following information:

23 (1) The number of claims filed per category;

24 (2) The number of civil actions filed;

25 (3) The number of civil actions compromised or settled;

26 (4) The number of verdicts in civil actions;

27 (5) The number of civil actions appealed;

28 (6) The number of civil actions dismissed;

29 (7) The total dollar amount paid in claims compromised
30 or settled;

31 (8) The total dollar amount paid pursuant to verdicts in
32 civil actions;

33 (9) The number of claims closed without payment and
34 the amount held in reserve for all such claims;

35 (10) The total dollar amount expended for loss adjust-
36 ment expenses, commissions and brokerage expenses;

37 (11) The total dollar amount expended in defense and
38 litigation of claims;

39 (12) The total dollar amount held in reserve for antici-
40 pated claims;

41 (13) Net profit or loss;

42 (14) Investment and other income on net realized capital
43 gains and loss reserves and unearned premiums; and

44 (15) The number of malpractice insurance policies
45 canceled for reasons other than nonpayment of premiums.

46 The commissioner shall establish, in the rules, methods
47 of allocating investment and other income among capital
48 gains, loss reserves, unearned premiums and other assets
49 if an insurer does not separately account for and allocate
50 that income.

51 Any insurer who fails to submit any information to the
52 commissioner, as required by this subsection, in accor-
53 dance with the rules promulgated under this subsection,
54 shall be fined ten thousand dollars for each of the first five
55 failures and shall be fined one hundred thousand dollars
56 for the sixth and each subsequent failure.

57 (c) The commissioner shall report annually, during the
58 month of November, to the joint standing committee on
59 the judiciary the following information pertaining to each
60 insurer providing five percent or more of the malpractice
61 insurance coverage in this state:

62 (1) The loss experience within the state during the
63 preceding calendar year;

64 (2) The rules, rates and rating plans in effect on the date
65 of the report;

66 (3) The investment portfolio, including reserves, and the
67 annual rate of return on the investment portfolio; and

68 (4) The information submitted to the commissioner
69 pursuant to the rules promulgated by authority of subsec-
70 tion (b) of this section.

**§33-20B-8. Insurers required to report results of civil actions
against physicians or podiatrists; penalties for
failure to report; notice and hearing.**

1 (a) Every insurer issuing, or issuing for delivery in this
2 state, a professional liability policy or providing profes-
3 sional liability insurance to health care providers, includ-
4 ing, but not limited to, physicians, osteopathic physicians
5 or surgeons, podiatrists or chiropractors, hospitals,
6 medical clinics, professional limited liability companies,
7 medical corporations or partnerships in this state shall
8 submit to the commissioner, within sixty days from the
9 date of entry of any judgment or dismissal without pay-
10 ment, the date a release is executed in connection with a
11 settlement or the date a file is closed on any claim in which
12 a law suit has not been filed involving the insured, the
13 following information:

- 14 (1) The date of any judgment, dismissal or settlement;
- 15 (2) Whether any appeal has been taken on the judgment
16 and, if so, by which party;
- 17 (3) The amount of any settlement or judgment against
18 the insured;
- 19 (4) Whether the claim was the subject of mediation;
- 20 (5) Whether any settlement of a claim was made in a
21 lump sum payment, a structured settlement or a combina-
22 tion of the two; and
- 23 (6) Any other information required by the commissioner.

24 For purposes of this section, "claim" means a third-
25 party request for indemnification.

26 (b) If there is any additional resolution, including
27 appellate decision or other subsequent action, the insurer
28 shall file a supplemental report to the commissioner.

29 (c) The West Virginia insurance guaranty association
30 created pursuant to article twenty-six of this chapter and
31 the state board of risk and insurance management created
32 pursuant to article twelve, chapter twenty-nine of this
33 code are subject to the reporting requirements of subsec-
34 tion (a) of this section.

35 (d) Any insurer or entity that fails to report any infor-
36 mation required to be reported under this section is subject
37 to a civil money penalty to be imposed by the insurance
38 commissioner. Upon a determination of the commissioner
39 that there is probable cause to believe that any insurer or
40 entity has failed or refused to make a report required by
41 this section, the commissioner shall provide written notice
42 to the alleged violator stating the nature of the alleged
43 violation. Upon written request of the alleged violator
44 within thirty days of the date of the commissioner's
45 written notice, the commissioner shall notify the alleged
46 violator of the time and place of a hearing at which the
47 alleged violator may appear to show good cause why a
48 civil penalty should not be imposed. The hearing shall be
49 conducted in accordance with the provisions of article five,
50 chapter twenty-nine-a of this code.

51 (e) If the commissioner determines that a violation of
52 this section has occurred, the commissioner shall assess a
53 civil penalty of not less than one thousand dollars nor
54 more than ten thousand dollars per violation. Anyone so
55 assessed shall be notified of the assessment in writing and
56 the notice shall specify the reasons for the assessment. If
57 the alleged violator requests a hearing, as provided in
58 subsection (d) of this section, the commissioner may not
59 make his or her determination of violation and assessment
60 until the conclusion of the hearing. The amount of penalty
61 collected shall be deposited in the general revenue fund.

62 (f) If any violator fails to pay the amount of the penalty
63 assessment to the commissioner within thirty days after
64 issuance of notice of the penalty assessment, the commis-
65 sioner may institute a civil action in the circuit court of

66 Kanawha County to recover the amount of the assessment.
67 In any civil action, the court's review of the commis-
68 sioner's action shall be conducted in accordance with the
69 provisions of section four, article five, chapter twenty-
70 nine-a of this code.

71 (g) No person or entity may be held liable in any civil
72 action with respect to any report made pursuant to this
73 section if the report was made without knowledge of any
74 falsity of the information contained in the report.

**ARTICLE 20C. CANCELLATION AND NONRENEWAL OF MALPRACTICE
INSURANCE POLICIES.**

**§33-20C-2. Cancellation prohibited except for specified rea-
sons; notice.**

1 No insurer once having issued or delivered a policy
2 providing malpractice insurance in this state may cancel
3 the policy, except for one or more of the following reasons:

4 (a) The named insured fails to discharge any of his or her
5 obligations to pay premiums for the policy or any install-
6 ment of the policy within a reasonable time of the due
7 date;

8 (b) The policy was obtained through material misrepre-
9 sentation;

10 (c) The insured violates any of the material terms and
11 conditions of the policy; or

12 (d) Reinsurance is unavailable. The insurer shall supply
13 sufficient proof of the unavailability to the commissioner.

14 (e) Any purported cancellation of a policy providing
15 malpractice insurance attempted in contravention of this
16 section is void.

§33-20C-3. Insurer to specify reasons for cancellation.

1 In every instance in which a policy or contract of
2 malpractice insurance is canceled by the insurer, the

3 insurer or its duly authorized agent shall cite within the
4 written notice of the action the allowable reason in section
5 two of this article for which the action was taken and shall
6 state with specificity the circumstances giving rise to the
7 allowable reason cited. The notice of the action shall
8 further state that the insured has a right to request a
9 hearing, pursuant to section five of this article, within
10 thirty days.

**§33-20C-4. Notice period for cancellation; ninety-day notice
required for nonrenewal.**

1 (a) No insurer shall fail to renew a policy or contract
2 providing malpractice insurance unless written notice of
3 the nonrenewal is forwarded to the insured by certified
4 mail, return receipt requested, not less than ninety days
5 prior to the expiration date of the policy.

6 (b) No insurer shall cancel a policy or contract providing
7 malpractice insurance during the term of the policy unless
8 written notice of the cancellation is forwarded to the
9 insured by certified mail, return receipt requested, not
10 more than thirty days after the reason for the cancellation,
11 as provided in section two of this article, arose or occurred
12 or the insurer learned that it arose or occurred and not less
13 than thirty days prior to the effective cancellation date.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Carly Fiorino
.....
Chairman Senate Committee

Robert J. Ambrose
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

David Holmes
.....
Clerk of the Senate

Gregory M. Sawyer
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

Robert J. Latta
.....
Speaker House of Delegates

The within *is approved* this the *16th*
Day of *November*, 2001.

Robert J. Latta
.....

PRESENTED TO THE

GOVERNOR

Date 11/20/01

Time 2:30