WEST VIRGINIA CODE CHAPTER 33 ARTICLE 20B

§33-20B-1. Scope of article.

This article applies to medical malpractice insurance policies only. Nothing in this article shall be construed to supplant any provision of article twenty of this chapter which does not directly conflict with the provisions herein.

§33-20B-2. Rate making.

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

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

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

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

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

(e) An insurer may use guide "A" rates and other nonapproved rates, also known as "consent to rates": Provided, That the insurer shall, prior to entering into an agreement with an individual provider or any health care entity, submit guide "A" rates and other nonapproved rates to the commissioner for review and approval: Provided, however, That the commissioner shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code, which set forth the standards and procedure for reviewing and approving guide "A" rates and other nonapproved rates. No insurer may require execution of a consent to rate endorsement for the purpose of offering to issue or issuing a contract or coverage to an insured or continuing an existing contract or coverage at a rate in excess of that provided by a filing otherwise applicable.

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

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

§33-20B-3. Rate filings.

(a) On or before July 1, 2004 and on July 1, each year thereafter, or at such other time specified by the commissioner, every insurer offering malpractice insurance in this state shall make a rate filing, in accordance with the provisions of section four, article twenty of this chapter, regardless of whether any increase or decrease is indicated, pursuant to subsection (a), section four, article twenty of this chapter. The information furnished in support of a filing shall include: (i) The experience or judgment of the insurer or rating organization making the filing; (ii) its interpretation of any statistical data the filing relies upon; (iii) the experience of other insurers or rating organizations; (iv) the character and extent of the coverage contemplated; (v) the proposed effective date of any requested change and (vi) any other relevant factors required by the commissioner. When a filing is not accompanied by the information required by this section upon which the insurer supports the filing, the commissioner shall require the insurer to furnish the information and, in that event, the waiting period prescribed by subsection (b) of this section shall commence as of the date the information is furnished.

A filing and any supporting information shall be open to public inspection as soon as the filing is received by the commissioner. Any interested party may file a brief with the commissioner supporting his or her position concerning the filing. Any person or organization may file with the commissioner a signed statement declaring and supporting his or her or its position concerning the filing. Upon receipt of any such statement prior to the effective date of the filing, the commissioner shall mail or deliver a copy of the statement to the filer, which may file a reply. This section is not applicable to any memorandum or statement of any kind by any employee of the commissioner.

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

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

§33-20B-3a. Rate prohibitions.

Reduced rates charged for certain specialties or risks found by the commissioner to be predatory, designed to gain market share or otherwise inadequate are prohibited.

§33-20B-4. Disapproval of filings.

(a) If within the waiting period or any extension thereof as provided in subsection (b), section three of this article, the commissioner finds that a filing does not meet the requirements of this article, he or she shall send to the insurer or rating organization which made the filing written notice of disapproval of the filing specifying therein in what respects he or she finds the filing fails to meet the requirements of this article and stating that the filing shall not be effective. Within thirty days from the issuance of written notice of disapproval, any insurer or rating organization aggrieved by the disapproval of any filing may request a hearing pursuant to section thirteen, article two of this chapter.

(b) If at any time subsequent to the waiting period or any extension thereof as provided in subsection (b), section three of this article, the commissioner finds that a filing does not meet the requirements of this article, he or she shall send to the insurer or rating organization which made the filing a written order specifying in what respect he or she finds that such filing fails to meet the requirements of this article and a date, not less than thirty days from the issuance of the order, when the filing shall be considered no longer effective. Within thirty days from the issuance of the order, any insurer or rating organization aggrieved by the order may request a hearing thereon pursuant to section thirteen, article two of this chapter. Any such order shall not affect any contract or policy made or issued prior to the expiration date set forth in the order.

(c) Any person or organization aggrieved by any filing which is in effect or the application thereof may request a hearing thereon pursuant to section thirteen, article two of this chapter. The insurer or rating organization which made the filing shall be notified in writing upon receipt of any request for hearing and thereby made a party to the hearing. Upon hearing, if the commissioner finds that the filing fails to meet the requirements of this article, he or she shall issue an order specifying in what respects he or she so finds and a date, not less than thirty days from the issuance of the order, when the filings shall be considered no longer effective.

(d) Within the initial ninety-day waiting period, the commissioner shall hold a public hearing upon every filing which requests an increase in general rates of ten percent or more and upon every filing which, in the opinion of the commissioner, is of such import that it will affect the public. The insurer or rating organization which made the filing shall be notified in writing not less than fifteen days prior to the hearing date. Notice of the time, place and filing to be considered shall be published as a Class II legal advertisement in every county in the state in accordance with article three, chapter fifty-nine of this code.

§33-20B-5. Rating organizations.

(a) A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this state, may make application to the commissioner for license as a rating organization for such kinds of malpractice insurance as are specified in its application and shall file therewith: (1) a copy of its Constitution, its articles of agreement or association or its certificates of incorporation, and of its bylaws, rules and regulations governing the conduct of its business; (2) a list of its members and subscribers; (3) the name and address of a resident of this state as attorney-in-fact upon whom notices or orders of the commissioner or process affecting such rating organization may be served; and (4) a statement of its qualifications as a rating organization. If the commissioner finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization and that its Constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall issue a license specifying the kinds of insurance or subdivisions thereof for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the commissioner within sixty days of the date of its filing with him. Licenses issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the commissioner. The fee for said license shall be $25, which fee shall be in addition to all other fees, licenses or taxes to which a rating organization might otherwise be subject, and all fees so collected shall be paid to the state Treasury pursuant to subsection (b), section thirteen, article three of this chapter. In the event the rating organization ceases to meet the requirements of this article, the license issued pursuant to this section may be suspended or revoked by the commissioner upon notice and hearing pursuant to article five, chapter twenty-nine-a of this code. Every rating organization shall notify the commissioner promptly of every change in: (1) its Constitution, its articles of agreement or association or its certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business; (2) its list of members and subscribers; and (3) the name and address of the resident of this state designated as attorney-in-fact by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

(b) The commissioner shall promulgate legislative rules pursuant to article three, chapter twenty-nine-a of this code prescribing procedures for rating organizations to permit any insurer not a member to become a subscriber to its rating services for any kind of insurance for which it is authorized to act as a rating organization pursuant to this section. Each rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any legislative rule in its application to subscribers shall be reviewed by the commissioner upon request of any such subscriber. If the commissioner finds, upon notice and hearing provided pursuant to article five, chapter twenty-nine-a of this code, that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule is not to be applicable to subscribers and promulgate a revised rule. The denial of any insurer's application for subscribership in contravention of a legislative rule or the failure to approve or deny such an application within thirty days after

submission to the rating organization shall be reviewed by the commissioner upon request of the aggrieved insurer. If the commissioner finds, upon notice and hearing provided pursuant to article five, chapter twenty-nine-a of this code, that the insurer has been wrongfully denied subscribership, he shall order the rating organization to admit the insurer as a subscriber.

(c) No rating organization shall adopt any policy or rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policy holders, members or subscribers.

(d) Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this article or article twenty of this chapter is hereby authorized, provided the filings resulting from such cooperation are subject to all the provisions of this article and article twenty which are applicable to filings generally.

The commissioner may review such cooperative activities and practices. If the commissioner finds, upon notice and hearing provided pursuant to article five, chapter twenty-nine-a of this code, that any such activity or practice is unfair, unreasonable or otherwise inconsistent with the provisions of this article, he shall issue a written order specifying in what respects such activity or practice is unfair, unreasonable or otherwise inconsistent with the provisions of this article, and requiring that such activity or practice be discontinued immediately.

(e) Any rating organization may subscribe for or purchase actuarial, technical or other services, and such services shall be available to all members and subscribers without discrimination.

§33-20B-6. Rate review and reporting.

[Repealed.]

§33-20B-7. Studies by the commissioner.

The commissioner is hereby directed to study the feasibility and desirability of creating joint underwriting associations or alternative pooling agreements to facilitate the issuance and underwriting of malpractice insurance policies in this state. The commissioner is further directed to identify and study the policies and practices of all insurers in settling dollar amounts to be held in reserve for anticipated claims and claims filed against malpractice insurance policies in this state.

Beginning in the year one thousand nine hundred eighty-six, the commissioner shall report periodically the results of the studies required by this section to the joint standing committee of the judiciary. Beginning in the year one thousand nine hundred eighty-seven, the commissioner shall file an annual report of the results of such studies with the Legislature on the first day of its regular session.

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

[Repealed.]

§33-20B-9. Authority of commissioner to promulgate rules and regulations regarding affiliate and subsidiary operating results.

The commissioner may as he deems necessary after notice and hearing promulgate rules and regulations in accordance with chapter twenty-nine-a of this code to define the commissioner's authority to consider the operating results of an insurer's affiliates and subsidiaries in the rate making and solvency determination of that insurer.