
WEST VIRGINIA CODE CHAPTER 33
ARTICLE 20D

WV Legislature

§33-20D-1. Scope of article.

This article applies to malpractice insurance as defined in subdivision (9), subsection (e), section ten, article one of this chapter insuring a medical physician, osteopathic physician, podiatric physician, chiropractic physician, dentist, midwife, nurse practitioner or hospital which has been in effect for at least sixty days.

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§33-20D-2. Definitions.

As used in this article:

(a) "Tail insurance" means insurance which covers a professional insured once a claims made malpractice insurance policy is cancelled, not renewed or terminated and covers claims made after such cancellation or termination for acts occurring during the period the prior malpractice insurance was in effect.

(b) "Claims made malpractice insurance policy" means a policy which covers claims which are reported during the policy period, meet the provisions specified by the policy, and are for an incident which occurred during the policy period, or occurred prior to the policy period, as is specified by the policy.

§33-20D-3. Tail insurance to be offered upon cancellation; availability of amortization; minimum premium rates; penalties for noncompliance.

- (a) Upon cancellation, nonrenewal or termination of any claims made professional malpractice insurance policy, the insurer shall offer to the insured tail insurance coverage.
- (b) Upon cancellation, nonrenewal or termination of any claims made professional malpractice insurance policy, the insurer shall offer to any professional licensed and practicing in the State of West Virginia, or who, upon retirement, last practiced in the State of West Virginia, the opportunity to amortize the payment of premiums for tail insurance over a period of not more than thirty-six months, in quarterly payments, at a rate to be established by the Insurance Commissioner: Provided, That quarterly premiums paid pursuant to this subsection shall not be less than \$750.
- (c) The first quarterly payment shall be payable contemporaneous with the issuance of the tail coverage policy. Subsequent payments shall be due and payable quarterly thereafter. Each licensed malpractice insurer shall submit for approval, by the commissioner, a plan for determination of partial limits in the event of default on amortized payment.
- (d) Any insurer who fails to offer tail insurance or in any other way violates the provisions of this article shall be assessed a penalty equal to the amount of the premium due.
- (e) The offer of tail insurance coverage required by this section shall expire forty-five days after the cancellation, termination or other expiration of the claims made professional malpractice insurance policy, unless sooner accepted, in writing, by the insured.

§33-20D-4. Insurance commissioner to promulgate rules; establish amortization rates.

(a) Pursuant to article three, chapter twenty-nine-a of this code, the Insurance Commissioner shall promulgate legislative rules establishing procedures necessary to effectuate the provisions of this article. The first set of rules shall be promulgated as emergency rules within forty-five days of the effective date of this article.

(b) The Insurance Commissioner shall promulgate rules and regulations providing for the amortization of premium payments for tail insurance, which rules shall include, but not be limited to:

- (1) Amortization schedules for various periods, but not to exceed a period of thirty-six months;
- (2) Reasonable annual amortization rates;
- (3) Reasonable annual interest rates;
- (4) Such other schedules and rates as the commissioner deems necessary to effect the provisions of this article.