WEST VIRGINIA CODE: §33-60-6

§33-60-6. Extended no-action letter; review of beta test.

(a) Within 60 days of completion of the beta test, unless the time period is extended up to 30 days upon notice from the commissioner, the commissioner shall issue an extended no-action letter or a notice declining to issue an extended no-action letter. The participant may continue to employ the insurance innovation pursuant to the terms and conditions of the limited letter during the period between the completion of the beta test and the issuance of either an extended no-action letter or a notice declining to issue an extended no-action letter.

(b) The commissioner shall review the results of the beta test to determine whether the innovation satisfies the following requirements:

(1) The data presented demonstrates that the innovation's utility was meritorious of an extension;

(2) Regulatory and statutory barriers prevent continued use of the innovation within this state;

(3) The innovation provided a benefit to West Virginia consumers; and

(4) The issuance of an extended no-action letter:

(A) Presents no risk of unreasonable harm to consumers or the marketplace; and

(B) Serves the public interest.

(c) Upon review of the results of the beta test the commissioner shall, in his or her discretion, issue one of the following:

(1) If the commissioner determines that the innovation fails to satisfy any of the requirements under §33-60-6(b) of this code, he or she shall:

(A) Issue a notice declining to issue an extended no-action letter;

(B) Describe in the notice the reasons for the declination;

(C) Notify the participant for the innovation of the notice; and

(D) Publish the notice on the commissioner's publicly accessible Internet website; or

(2) If the commissioner determines that the innovation satisfies the requirements under §33-60-6(b) of this code, he or she shall issue an extended no-action letter. An extended no-

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action letter issued by the commissioner shall include:

(A) A description of the insurance innovation and the specific conduct permitted by the extended no-action letter in sufficient detail to enable any person to use the innovation or a product, process, method, or procedure not substantially different from the innovation within the safe harbor of the extended no-action letter;

(B) Notice of any certificate of authority, license, or permit the commissioner determines is necessary to use, sell, or license the innovation, or make the innovation available, in this state;

(C) An expiration date not greater than three years following the date of issuance;

(D) Notice that the extended no-action letter may:

(i) Be modified only by:

(I) Legislative rule proposed by the commissioner, if the safe harbor addresses a requirement established by rule; or

(II) An act of the Legislature; and

(ii) Be rescinded prior to its expiration if the commissioner receives complaints and determines continued activity poses a risk of harm to consumers;

(E) Clarification of required procedures related to the issuance and cancellation of any policies of insurance, if applicable, due to the expiration period; and

(F) Notice that, upon expiration, all persons relying on the extended no-action letter shall cease and desist operations related to the innovation unless changes have been made to West Virginia law to permit the innovation by:

(i) The promulgation of a legislative rule by the commissioner, if the safe harbor addresses a requirement established by rule; or

(ii) An act of the Legislature.

(d) A hearing on a notice of declination may be requested in accordance with §33-2-13 of this code.

(e) An extended no-action letter issued by the commissioner pursuant to this section shall be published on the commissioner’s publicly accessible internet website.

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