



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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4/19/2021 2:49:36 PM

Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Risk And Insurance Management TITLE-SERIES: 115-02
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Public Entities Insurance Program
CITE STATUTORY AUTHORITY: W. Va. Code §§29-12-5.

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) 126

Section 2021(RS) Passed On 3/11/2021 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

May 1, 2021

This rule shall terminate and have no further force or effect from the following date:

August 01, 2026

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Misty Peal -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 115
LEGISLATIVE RULES
STATE BOARD OF RISK AND INSURANCE MANAGEMENT

SERIES 2
PUBLIC ENTITIES INSURANCE PROGRAM

§115-2-1. General.

1.1. Scope. -- This rule establishes the procedures for implementing and administering the public entities insurance program established pursuant to W. Va. Code §§29-12-5(b) and 29-12A-1 et seq. The purpose of the program is to provide liability insurance coverage and property insurance coverage to eligible and qualified political subdivisions, charitable or public service organizations and emergency medical service agencies.

1.2. Authority. -- W. Va. Code §§29-12-5.

1.3. Filing Date. -- April 19, 2021

1.4. Effective Date. -- May 1, 2021

1.5. Sunset Provision -- This rule shall terminate and have no further force and effect on August 1, 2026.

§115-2-2. Definitions.

2.1. "Board" means the state board of risk and insurance management.

2.2. "Entity" means the political subdivisions, charitable or public service organizations and emergency medical service agencies requesting or obtaining liability or property insurance.

2.3. "Fee agreement" means the agreement between the entity and producer designating the producer as producer of record for the entity and authorizing the board to pay the producer of record the commission established in the agreement.

2.4. "Producer" means a person licensed by the West Virginia Insurance Commissioner under the laws of West Virginia to sell, solicit or negotiate property and casualty insurance.

§115-2-3. Designation of Producer of Record.

3.1. An entity may not procure or renew insurance through the public entities insurance program unless it does so through a producer who has entered into a fee agreement with the entity. Failure to comply with this requirement will result in declination of the entity's application for coverage or non-renewal of existing coverage.

3.2. The board shall provide all forms, documents and instructions necessary to apply for coverage to the entity's producer of record upon request by the entity or the producer of record. The entity and its producer of record are jointly responsible for submitting all forms, documents, and underwriting information needed to apply for coverage in a manner and within a time period acceptable to the board.

3.3. Before the end of December during each fiscal year, the board will provide notification to producers of record of the date by which the underwriting questionnaire and any other information needed for renewal of existing coverage is due for the next fiscal year. The notification will be sent at least 45 days prior to the date the underwriting questionnaire and other information is due. If the underwriting questionnaire or any other information needed for renewal of any coverage is not received by the designated date, the board will issue a written non-renewal notice informing the entity that coverage will cease on July 1 at 12:01 AM if the entity fails to take further action.

3.3.1 The non-renewal notice will also provide a date by which the underwriting questionnaire or other information will still be accepted by the board as a late submission, and will state that submission of the underwriting questionnaire or other information after the late submission date but before July 1 will result in an assessment of \$500.00. The board may assess the penalty of \$500.00 against any entity that submits the needed renewal information after the late submission date provided in the non-renewal notice and before July 1.

3.3.2. As stated in the non-renewal notice, coverage will cease on July 1 at 12:01 AM for any entity that fails to submit the underwriting questionnaire or other information needed for renewal by June 30 and pay a \$500.00 late submission penalty. Should the entity desire to procure coverage through the public entities insurance program during the year following non-renewal it will be required to apply for coverage as a new entity and pay a penalty of \$500.00, however, this penalty shall not apply if the non-renewal was due to the entity's decision to procure coverage other than through the program.

§115-2-4. Producer's Commission.

4.1. The amount of the producer of record's commission is a matter of agreement between the entity and its producer of record and established in the fee agreement.

4.2. The commission may not exceed eight percent of the earned annual premium. The earned premium will be computed on an annual basis of July 1 of each year to June 30 of the following year. The difference between the maximum of eight percent and the producer of record's commission shall be credited to the entity's account. Commission is based on premium paid by the entity for the policy year. In the event that coverage is canceled during the term of the policy, the commission will be based on premium paid for the period of time the insurance was in force.

4.3. The entity may change its producer of record and/or the amount of commission to be paid to the producer by notification to the board and submission of a new fee agreement. Commission will be paid to the producer of record annually following the end of the policy year for which the producer completed the underwriting questionnaire for the entity. Should the entity change its producer of record during a policy year, the commission for that policy year will only be paid to the producer who completed the underwriting questionnaire for the entity for that policy year.

§115-2-5. Ineligible Classes.

5.1. The following classes of entities have been determined by the board to be ineligible for coverage under W. Va. Code §29-12-5(b):

5.1.1. Hospitals - except those owned and operated by political subdivisions already insured with the state program, or critical access hospitals as specified in W. Va. Code §29-12-5(b).

5.1.2. Airports and airport authorities.

5.1.3. Churches and religious organizations.

5.1.4. Country clubs.

5.1.5. Homeowners associations.

5.1.6. Lobbying organizations.

5.1.7. Political organizations.

5.1.8. Any "for profit" organizations, except emergency medical service agencies as specified in W. Va. Code §29-12-5(b). "For profit" organizations includes any for profit organization that may be owned in full or in part by an otherwise eligible entity.

§115-2-6. Rates and Coverages.

6.1. The board shall determine and establish rates, rate programs, deductibles, and coverages as needed.

6.2. An entity may procure liability insurance through the public entities insurance program without also procuring property insurance. However, property insurance may only be procured if the entity also procures liability insurance through the public entities insurance program.

6.3. The board's administrative costs associated with operation of the public entities insurance program will be included in the actuarial model for determination of premium due from insured entities.

§115-2-7. Cancellation and Nonrenewal Provisions.

7.1. The board may cancel or non-renew an entity's insurance coverage for any of the following reasons:

7.1.1 The entity's failure to make a premium payment within thirty (30) days of the premium due date;

7.1.2. Fraud or substantial misrepresentation by the entity or a representative of the entity procuring or renewing the insurance coverage or in presenting a claim under the insurance coverage;

7.1.3. A substantial increase in the risk of loss to which the public entity insurance program is exposed under the policy, including, but not limited to, the following:

7.1.3.a The conviction of the entity or any officer, employee, or volunteer of the entity of any crime having as one of its necessary elements an act increasing any hazard insured against;

7.1.3.b. Discovery of willful or reckless acts or omissions on the part of any officer, employee or volunteer of the entity which substantially increases any hazard insured against;

7.1.3.c. The occurrence of a change in the risk which substantially increases any hazard insured against after insurance coverage has been issued or renewed;

7.1.3.d. The entity has a loss ratio exceeding one hundred percent in at least three of the past five years in the program;

7.1.3.e. The entity's violation of any local fire, health, safety, building or construction regulation or ordinance with respect to any insured property or the occupancy thereof which substantially increases any hazard insured against;

7.1.4. The entity violates any of the material terms or conditions of the insurance coverage or the public entity insurance program; or

7.1.5. The entity no longer qualifies for participation in the public entity insurance programs administered by the board.

7.2. The board shall give an entity at least a thirty (30) day notice of cancellation of coverage by written notice to the entity by certified mail, return receipt requested. The notice shall comply with the requirements of section 7.4 of these rules.

7.3. The board shall renew an entity's insurance coverage, unless at least sixty (60) days prior to the date of the expiration provided in the certificate of coverage, the board provides the entity with a written notice, by certified mail, return receipt requested, of its intention not to renew the insurance coverage beyond the expiration date. The notice shall comply with section 7.4 of these rules unless the entity is insured elsewhere, has accepted replacement coverage, or has requested or agreed to the nonrenewal.

7.4. In every instance in which insurance coverage is cancelled or is not renewed, the board shall cite within the written notice of the action the reason or reasons set forth in section 7.1 of this rule for which the action was taken and shall state with specificity the circumstances giving rise to the board's action. The notice shall further state that the entity has a right to appeal the determination pursuant to section 7.5 of this rule, and the right to be represented by counsel during such appeal.

7.5. Any entity whose coverage has been cancelled or nonrenewed, may appeal the decision to the board by filing a written petition for appeal, conforming to the procedural rules promulgated by the board within fifteen (15) calendar days of receipt of the notice of cancellation or nonrenewal.