

STATE OF WEST VIRGINIA



OFFICES OF THE  
**INSURANCE COMMISSIONER**

2100 WASHINGTON STREET, EAST  
CHARLESTON, WEST VIRGINIA 25305  
TELEPHONE (304) 348-3386

RICHARD G. SHAW  
INSURANCE COMMISSIONER

JOHN D. ROCKEFELLER, IV  
GOVERNOR

NOTICE OF PUBLIC HEARING BEFORE RICHARD G. SHAW  
INSURANCE COMMISSIONER OF WEST VIRGINIA

IN THE MATTER OF: Supplemental Insurance Coverage for Continuum  
of Care Services  
Proposed Legislative Rule Series XVIII  
Administrative Hearing No. 83-16

TO: All Interested Persons

Please take notice that the Insurance Commissioner of the State of West Virginia will hold a public hearing on July 13, 1983, at 9:30 o'clock, a.m., in Rooms A and B of the Capitol Complex Conference Center, 1900 Washington Street, East, Charleston, West Virginia. This public hearing has been scheduled, pursuant to the provisions of Chapter 29A, Article 3, Section 5 of the Code of West Virginia of 1931, as amended, to receive comment from any interested person in regard to proposed Legislative Rule of the Insurance Commissioner, Series XVIII, concerning standards for supplemental insurance coverage for continuum of care services.

The record of the hearing will be open for written comment from any interested person from the time of issuance of this

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE

THIS DATE June 9, 1983

Administrative Law Division

Notice of Administrative Hearing No. 83-16

Notice until the time of hearing. Such written comments should be submitted to the Honorable Richard G. Shaw, Insurance Commissioner of the State of West Virginia, 2100 Washington Street, East, Charleston, West Virginia 25305.



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Richard G. Shaw  
Insurance Commissioner of West Virginia



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Cheryl L. Davis  
Special Assistant Attorney General,  
Counsel for the Insurance Commissioner

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GOVERNOR

NOTICE OF PUBLIC HEARING BEFORE RICHARD G. SHAW  
INSURANCE COMMISSIONER OF WEST VIRGINIA

IN THE MATTER OF: Excess Lines Brokers -  
Proposed Legislative Rule Series XX  
Administrative Hearing No. 83-17

TO: All Interested Persons

Please take notice that the Insurance Commissioner of the State of West Virginia will hold a public hearing on July 26, 1983, at 9:30 o'clock, a.m., in Room E of the Capitol Complex Conference Center, 1900 Washington Street, East, Charleston, West Virginia. This public hearing has been scheduled, pursuant to the provisions of Chapter 29A, Article 3, Section 5 of the Code of West Virginia of 1931, as amended, to receive comment from any interested person in regard to proposed Legislative Rule of the Insurance Commissioner, Series XX, concerning licensing and regulation of excess lines brokers.


The record of the hearing will be open for written comment from any interested person from the time of issuance of this

THE OFFICE OF  
**JAMES MANCHIN**  
SECRETARY OF STATE

THIS DATE June 9, 1983  
Administrative Law Division

Notice of Administrative Hearing No. 83-17

Notice until the time of hearing. Such written comments should be submitted to the Honorable Richard G. Shaw, Insurance Commissioner of the State of West Virginia, 2100 Washington Street, East, Charleston, West Virginia 25305.



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Richard G. Shaw  
Insurance Commissioner of West Virginia



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Cheryl L. Davis  
Special Assistant Attorney General,  
Counsel for the Insurance Commissioner

STATE OF WEST VIRGINIA



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RICHARD G. SHAW  
INSURANCE COMMISSIONER

JOHN D. ROCKEFELLER, IV  
GOVERNOR

STATE REGISTER FILING

I, Richard G. Shaw, Commissioner,  
Title or Position

Insurance, hereby submit to record in  
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- proposed rules and regulations superseding rules and regulations already on file;
- notice of hearing;
- findings and determinations;
- rules and regulations; or
- other - specify ( fiscal note

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE

THIS DATE June 9, 1983  
Administrative Law Division

This filing pertains to

Chapter 33  
Article 12  
Series XX  
Section \_\_\_\_\_  
Page No. \_\_\_\_\_

- proposed rules and regulations are required to go to Legislative Rule Making Committee;
- proposed rules and regulations are excluded from Legislative Rule Making Committee;

June 9, 1983  
Date Submitted

Richard G. Shaw  
Signature of Person Authorizing  
this Filing

## EXCESS LINE BROKERS

Chapter 33-12  
Series XX  
1983

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APPENDIX

Exhibit A

WEST VIRGINIA LEGISLATIVE RULE  
INSURANCE COMMISSIONER OF WEST VIRGINIA

Chapter 33-12  
Series XX  
(1983)

Subject: Regulation Relating to Excess Line Brokers

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Section 1. General

1.01. Scope - This legislative rule establishes certain requirements for the licensing and regulation of excess line brokers pursuant to Chapter 33, Article 12 of the Code of West Virginia of 1931, as amended.

1.02. Authority - This legislative rule is issued under the authority of Chapter 33, Article 2, Section 10 of the Code of West Virginia of 1931, as amended.

1.03. Filing Date - This legislative rule was promulgated on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, and was filed on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, in the Office of the Secretary of State.

1.04. Effective Date - This legislative rule becomes effective on the \_\_\_\_\_ day of \_\_\_\_\_, 1983.

Section 2. Definitions

2.01. Commissioner means the insurance commissioner of West Virginia.

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE

THIS DATE June 9, 1983  
Admin. of the Law Dept.



2.02. Evidences of Insurance means written or printed statements evidencing the applicability and effectiveness of insurance coverages, including but not limited to policy forms, certificates, cover notes, binders, and other traditionally acceptable evidences of insurance.

2.03. Excess Line Insurer means an insurer not licensed by the commissioner to do insurance business, and considered to be a non-admitted insurer, in the State of West Virginia.

2.04. Excess Line Broker means an individual licensed pursuant to the provisions of this regulation and West Virginia Code § 33-12-13, for the purposes of placing insurance of risks resident, located or to be performed in this State, with an excess line insurer.

2.05. Excess Line Market means the entire scope of insurance business on risks resident, located or to be performed in this State, to be placed with an excess line insurer.

2.06. Insolvent Insurer means any insurer which is determined to be insolvent in accordance with the provisions of Chapter 33 of the Code of West Virginia of 1931, as amended, on any insurer which is determined to be insolvent by the commissioner of any other state.

2.07. Licensed Insurer means an insurer licensed by the commissioner to do insurance business in the State of West Virginia.

Section 3. Licensing of an Excess Line Broker; Revocation,  
Suspension or Refusal to Renew License, and  
Penalty in lieu Thereof

3.01. Licensing Requirements - Any applicant for an  
excess line broker's license issued or renewed under the  
provisions of West Virginia Code § 33-12-13:

A. Shall be a duly licensed West Virginia resident  
agent holding a current and valid license for the type(s) of  
insurance which the applicant expects and intends to export  
to the excess line market; and,

B. Shall have held for at least three consecutive years  
immediately preceding the date of application a valid agent's  
license for the type(s) of insurance the applicant expects and  
intends to export to the excess line market, and shall have  
held a valid West Virginia resident agent's license for such  
type(s) of insurance for at least one of those three years.  
The commissioner, in his discretion, may waive this require-  
ment if the applicant otherwise demonstrates the necessary  
trustworthiness and competence by education, experience or  
other relevant factors; and,

C. Shall satisfactorily complete an examination admin-  
istered by the office of the commissioner or its designated  
agent. The commissioner shall not require an examination for

any person who has held and continually renewed an excess line broker's license in West Virginia on or before the effective date of this regulation; and,

D. Shall pay the required license fee as established by the provisions of West Virginia Code § 33-12-13; and,

E. Shall file with the commissioner and thereafter maintain in force for so long as the license or any renewal thereof remains in effect, a bond in favor of the State of West Virginia in the penal sum as established by the provisions of West Virginia Code § 33-12-13, with an authorized corporate surety approved by the commissioner, conditioned that he shall conduct business under his license in accordance with this regulation and the West Virginia Code. No bond shall be terminated unless at least thirty-days' prior written notice thereof is filed with the commissioner; and,

F. Shall be deemed trustworthy for the purpose of conducting insurance business as an excess line broker, as required by the provisions of West Virginia Code § 33-12-13; and,

G. Shall satisfy any other criteria reasonably established by the commissioner.

3.02. Revocation, Suspension or Refusal to Renew License -  
Whenever, after notice and hearing, the commissioner is satisfied that any excess line broker has violated any provisions of

any administrative regulation of the commissioner or any provisions of Chapter 33 of the Code of West Virginia of 1931, as amended, or is incompetent or untrustworthy, he shall revoke, suspend or refuse to renew the license of such excess line broker as required by the provisions of West Virginia Code § 33-12-25. In lieu of revoking, suspending or refusing to renew such license, the commissioner, in his discretion, may order such licensee to pay to the State of West Virginia a penalty in a sum not to exceed one hundred dollars for each violation, and upon failure of such licensee to pay such penalty by delivery of such sum to the commissioner within thirty days of notice thereof, the commissioner shall revoke, suspend or refuse to renew such license.

#### Section 4. Placement of Excess Line Coverages

4.01. Due Diligence - In accordance with the provisions of West Virginia Code § 33-12-10(b), the insurance coverage written by an excess line insurer and placed by an excess line broker shall not be procurable from licensed insurers authorized to transact that kind of insurance in this State. The broker shall submit to the commissioner a sworn notarized statement, as provided in Section 4.04 of this regulation, that a diligent search has been made to place the risk with licensed insurers

authorized to write and actually writing the particular type of risk sought to be placed in the excess line market. This statement also shall include the reasons why the broker has been unable to place the risk with licensed insurers.

4.02. Notification - Each excess line insurance policy or evidence of insurance shall have printed or stamped in contrasting color on the front page the following statement:

THIS COMPANY IS NOT LICENSED TO DO  
BUSINESS IN WEST VIRGINIA, AND IS  
NOT SUBJECT TO THE WEST VIRGINIA  
INSURANCE GUARANTY ACT.

4.03. Countersignature - In accordance with the provisions of West Virginia Code § 33-12-7, no contract of insurance covering a subject of insurance, resident, located or to be performed in this State, shall be executed, issued or delivered by an excess line broker unless the contract is signed or countersigned in writing by a duly licensed excess line broker. This section does not apply to: Reinsurance; credit insurance; any contract of insurance covering the rolling stock of any railroad or covering any vessel, aircraft or motor carrier used in interstate or foreign commerce, or covering any liability or other risks incident to the ownership, maintenance or operation thereof; any contract of insurance covering any property in interstate or foreign commerce, or any liability or risks incident thereto.

4.04. Excess Line Broker's Affidavit and Report - Each excess line broker shall execute and file with the commissioner, in accordance with the provisions of West Virginia Code § 33-12-11, the information requested on the Form Leb-3, as revised, attached to and made a part of this regulation. This report shall be filed under oath, and shall be received by the commissioner within forty-five days after the effective date of coverage, or within fifteen days after delivery of the policy or other acceptable evidence of insurance, whichever is sooner.

4.05. Records of Excess Line Broker - In accordance with the provisions of West Virginia Code § 33-12-15, each excess line broker shall keep in his office a full and true record of each excess line contract procured by him, and such records may be examined at any time thereafter by the commissioner. The records shall include the following items as they are applicable:

- A. Name and address of the excess line insurer; and,
- B. Name and address of the insured; and,
- C. Amount of insurance; and,
- D. Gross premium charged; and,
- E. Return premium paid, if any; and,
- F. Rate of premium charged on the several items of coverage; and,

G. Effective date of the contract and the terms thereof; and,

H. Brief general description of the risks insured against and the property insured.

4.06 Responsibilities of the Excess Line Broker -

Each licensed excess line broker who participates directly or indirectly in affecting any insurance contract on an excess line basis:

A. In no instance shall knowingly place any coverage in an insolvent insurer, in accordance with the provisions of West Virginia Code § 33-12-22; and,

B. May accept and place authorized excess line business from any insurance agent or broker licensed in this State for the kind of insurance involved, and may compensate such agent or broker thereof. The excess line broker shall have the right to receive from the excess line insurer the customary commission, in accordance with the provisions of West Virginia Code § 33-12-14; and,

C. In those instances in which excess line business is produced to an excess line broker by an agent or broker licensed in this State for the kind of insurance involved, it remains the excess line broker's responsibility to make the necessary filing of the Form Leb-3, as revised.

4.07. Excess Line Insurance Valid - In accordance with the provisions of West Virginia Code § 33-12-12, any insurance contract procured as excess line coverage from an excess line insurer shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect as like contracts issued by licensed insurers.

Section 5. Excess Line Premium Tax Annual Return and Report by Broker

5.01. Reporting of Premiums Placed and Taxed - Each excess line broker licensed in accordance with the provisions of this regulation and West Virginia Code § 33-12-13 shall make a return annually, under oath, on or before the first day of March, to the commissioner, of the gross amount of premiums charged the insureds by excess line insurers for insurance procured by such licensee, including any so-called dividends on participating insurance policies applied in reduction of premiums, less premiums returnable for cancellation. Such return shall be reported by the completion of the Excess Line Broker's Annual Statement Form Leb-4, as revised, prepared and supplied by the commissioner.

5.02. Payment of Excess Line Premium Taxes - The annual tax required to be paid under the provisions of this regulation shall be a sum equal to that in accordance with



the provisions of West Virginia Code § 33-12-16 and § 33-12-16a, and shall be paid to the commissioner on or before the first day of March. All such taxes paid to the commissioner shall be paid by him into the State treasury for the benefit of the State fund, unless otherwise required by the Code of West Virginia of 1931, as amended.

Section 6. Separability

6.01. Partial Invalidity - If any provision of this regulation is held invalid, the remainder of this regulation shall not be affected thereby.

(EXHIBIT A)  
STATE OF WEST VIRGINIA  
INSURANCE COMMISSIONER  
CHARLESTON 25305  
REPORT OF AN EXCESS LINE INSURANCE POLICY  
PLACED BY AN EXCESS LINE BROKER

STATE OF WEST VIRGINIA, COUNTY OF \_\_\_\_\_  
I, \_\_\_\_\_, an Excess Line Broker duly licensed by the State of  
West Virginia, hereby make oath and state to the Insurance Commissioner of West Virginia  
that pursuant to W.Va. Code §33-13-10(b) a diligent effort has been made to procure the  
amount of insurance necessary to protect against loss of or damage to property or person  
from insurers licensed to transact and actually writing this type of insurance business  
in West Virginia, and that the placing of this insurance has not been for the purpose of  
securing advantages as to premium rate or terms of the insurance contract. This insur-  
ance has not been placed with a licensed insurer because: \_\_\_\_\_

Name of Insured: \_\_\_\_\_

Address of Insured: \_\_\_\_\_

Location of Risk: \_\_\_\_\_

Description of Property: \_\_\_\_\_

Nature of Insurance: \_\_\_\_\_

Policy No: \_\_\_\_\_ Inception Date: \_\_\_\_\_ Term: \_\_\_\_\_

Gross premium this policy: \$ \_\_\_\_\_ Premium Rate: \$ \_\_\_\_\_

Amount of insurance with licensed insurers: \$ \_\_\_\_\_

Amount of insurance with excess line insurers: \$ \_\_\_\_\_

Name and address of excess line insurer which issued above-numbered policy:  
\_\_\_\_\_

Having failed to procure the required insurance with insurers licensed to transact  
business in West Virginia, I make oath that the following statements were printed or  
stamped in contrasting color on the face of this policy or other evidence of insurance:  
"THIS COMPANY IS NOT LICENSED TO DO BUSINESS IN WEST VIRGINIA, AND IS NOT SUBJECT TO THE  
WEST VIRGINIA INSURANCE GUARANTY ACT."

Witness my signature this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Affiant: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Notary Public: \_\_\_\_\_

My Commission expires: \_\_\_\_\_.

West Virginia Code §33-12-11 requires that this report be filed for each policy of excess  
line insurance obtained. Pursuant to the Administrative Regulations of the Insurance  
Commissioner, Series XX, Section 4.04, this report, completed in its entirety, shall be  
received by the Commissioner within 45 days after the effective date of coverage, or  
within 15 days after delivery of the policy or other acceptable evidence of insurance,  
whichever is sooner.