

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 2, 2017

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2017 OCT -2 A 8:37

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. INS-2017-00202

Ex Parte: In the matter of
Amending the Rules Governing
Claims-Made Liability Insurance Policies

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy may also be found at the Commission's website: <http://www.scc.virginia.gov/case>.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to rules set forth in Chapter 335 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Claims-Made Liability Insurance Policies" ("Rules"), which amend the Rules at 14 VAC 5-335-10 through 14 VAC 5-335-60 and add new Rules at 14 VAC 5-335-23, 14 VAC-335-27 and 14 VAC 5-335-45.

The amendments to Chapter 335 are necessary to update the Rules to reflect current positions and practices for filing and approval, establish greater clarity for ease of application and modernize the Rules to create more consistency with the regulatory requirements of other

states. These amendments clarify and further define that the Rules do not apply to incidental claims-made liability insurance, make a distinction between a basic extended reporting period and a supplemental reporting period and identify clear standards for each, amend the required consumer notice provided with a claims-made insurance policy, clarify and simplify the extended reporting period requirements upon policy termination, reduce the period of time for the mandatory offer of a supplemental extended reporting period, add a requirement for the insurer to provide loss information to the insured, and clarify certain prohibitions and minimum standards.

NOW THE COMMISSION is of the opinion that the Bureau's proposal to amend the Rules at 14 VAC 5-335-10 through 14 VAC 5-335-60 and add new Rules at 14 VAC 5-335-23, 14 VAC-335-27 and 14 VAC 5-335-45 should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposed amendments to the "Rules Governing Claims-Made Liability Insurance Policies," which amend the Rules at 14 VAC 5-335-10 through 14 VAC 5-335-60 and add new Rules at 14 VAC 5-335-23, 14 VAC-335-27 and 14 VAC 5-335-45, are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to consider the proposed amendments, shall file such comments or hearing request on or before November 30, 2017, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. INS-2017-00202.

(3) The Bureau shall hold a meeting during the comment period in order for insurers and interested persons to address questions about the proposed Rules to the Bureau. The meeting will be held on Thursday, November 2, 2017, at 10 a.m. in the Commission's third floor training room located in the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219.

(4) If no written request for a hearing on the proposal to amend the Rules as outlined in this Order is received on or before November 30, 2017, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt the Rules as submitted by the Bureau.

(5) The Bureau forthwith shall provide notice of the proposal to amend the Rules by sending, by e-mail or U.S. mail, a copy of this Order, together with the proposal, to all insurers licensed by the Commission to write insurance as defined in §§ 38.2-117, 38.2-118 and 38.2-111 B of the Code, as well as all interested persons.

(6) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed amended Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*.

(7) The Commission's Division of Information Resources shall make available this Order and the attached proposed amended Rules on the Commission's website:

<http://www.scc.virginia.gov/case>.

(8) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (5) above.

(9) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond,

Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's Office of
General Counsel and the Bureau of Insurance in care of Deputy Commissioner Rebecca Nichols.

A True Copy
Teste:

A handwritten signature in cursive script that reads "Joel H. Peck".

Clerk of the
State Corporation Commission

STATE CORPORATION COMMISSION, BUREAU OF INSURANCE

Rules Governing Claims-Made Liability Insurance Policies

CHAPTER 335

RULES GOVERNING CLAIMS-MADE LIABILITY INSURANCE POLICIES

14VAC5-335-10. Scope.

The provisions of this chapter shall apply to all policies of liability insurance, as defined in §§ 38.2-117, 38.2-118, and subsection B of § 38.2-111 of the Code of Virginia, that limit the time allowed for reporting claims arising out of injury, damage, or wrongful act or omission covered by the policy. Any such policy shall be deemed to be a claims-made liability insurance policy for purposes of this chapter. The provisions of this chapter shall apply to all claims-made liability insurance policies delivered or issued for delivery in the Commonwealth to become effective on or after ~~January 1, 2005~~ July 1, 2018.

This chapter shall not apply to incidental claims-made liability insurance.

14VAC5-335-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Basic extended reporting period" means an extension of the time allowed for reporting claims, after termination of any claims-made liability coverage, for injury, damage, or wrongful act or omission that occurred prior to termination of the coverage and that, except for the requirement to report claims during the policy period, was otherwise covered by the policy.

"Claims-made liability insurance ~~policy~~" means an insurance policy ~~or endorsement~~ providing coverage for the insured's liability for injury, damage, or wrongful act or omission occurring prior to the termination of coverage but subsequent to any applicable retroactive date, provided the claim for such injury, damage, or wrongful act or omission is first made during the policy period or any extended reporting period.

~~"Extended reporting period" means an extension of the time allowed for reporting claims, after termination of claims-made liability coverage, for injury, damage, or wrongful act or omission that occurred prior to termination of the coverage and that, except for the requirement to report claims during the policy period, was otherwise covered by the policy.~~

"Incidental claims-made liability insurance" means any claims-made liability insurance that is contained in any policy of insurance in which the coverage is provided with either no separate or identifiable charge or with a premium amount that does not exceed 10% of the total premium charged for the policy.

"Medical malpractice insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence in rendering or failing to render professional service by any provider of health care.

"Policy" means a coverage part, form or endorsement that is contained in a contract of insurance.

"Retroactive date" means the date on or after which injury, damage, or wrongful act or omission may occur and be covered under a claims-made liability insurance policy.

"Supplemental extended reporting period" means an extended reporting period that is available for the insured to purchase.

14VAC5-335-23. Required notice.

The following notice, or a notice that is substantially similar, shall be provided in writing with each new and renewal claims-made liability insurance policy issued or delivered in this Commonwealth:

You have purchased claims-made liability insurance. When this insurance terminates, the insurer will send an offer with the available options for purchasing the supplemental extended reporting period. You may be entitled to receive information on claims under this policy. If you have any questions regarding your claims-made coverage or the importance of purchasing the supplemental extended reporting period, please contact your insurance company or your insurance agent.

14VAC5-335-27. Standards for basic extended reporting period.

An insurer may offer a basic extended reporting period that is included in the policy and incurs no additional charge. The basic extended reporting period shall not be longer than 12 months.

14VAC5-335-30. Insurers Requirement to offer supplemental extended reporting period coverage.

A. Every claims-made liability insurance policy issued or delivered in this Commonwealth shall include a provision ~~which shall offer to~~ that the named insured ~~extended reporting period coverage upon termination of claims-made coverage~~ may purchase a supplemental extended reporting period in accordance with the provisions of 14VAC5-335-40 upon policy termination. To the extent that policy limits apply separately to each named insured, each named insured shall be separately entitled to purchase ~~an~~ a supplemental extended reporting period. ~~Termination~~ Policy termination of claims-made coverage shall include:

1. Cancellation or nonrenewal of the policy by the insurer or the insured;

2. Advancement of any applicable retroactive date; or

3. Renewal of the coverage policy on other than a claims-made basis.

~~B. The insured shall be allowed at least 30 days after termination in which to purchase the extended reporting period coverage.~~

~~C. Notwithstanding the foregoing, No offer of a supplemental extended reporting period coverage ~~does not have to be offered~~ is required if cancellation or nonrenewal of a claims-made liability insurance policy is due to:~~

~~1. Nonpayment of premium;~~

~~2. Failure to comply with terms or conditions of the policy; or~~

~~3. Fraud.~~

~~C. Each claims-made liability insurance policy shall contain provisions that clearly state when the supplemental extended reporting period will and will not be offered.~~

~~D. No insurer shall deliver or issue for delivery a claims-made liability insurance policy in this Commonwealth unless such policy contains the provisions set forth in subsections A, B and C of this section Upon a policy termination in accordance with subsection A of this section, the insurer shall offer in writing to the named insured a supplemental extended reporting period. The offer shall include the duration and premium of the minimum required supplemental extended reporting period coverage in 14 VAC5-335-40 and all other available duration and premium options. The offer shall be sent no earlier than the date of notification of termination of the policy and not later than 15 days after the termination of the policy. The named insured shall have a minimum of 30 days from the termination of the policy to purchase the supplemental extended reporting period.~~

~~E. The following notice, or a notice that is substantially similar, shall be provided in writing with each new and renewal claims-made liability insurance policy issued or delivered in this Commonwealth:~~

~~You have purchased a claims-made liability insurance policy. Please read this policy carefully to understand your coverage. There are certain circumstances in which you must be provided the opportunity to purchase an extended reporting period for reporting claims. These are explained in your policy. If you have any questions regarding the cost of an extended reporting period or the available options under the extended reporting period, please contact your insurance company or your insurance agent.~~

14VAC5-335-40. Extended Supplemental extended reporting period requirements.

A. Each insurer shall offer a supplemental extended reporting period to allow an extension of the time allowed to report claims as follows:

1. For medical professional liability malpractice insurance, an unlimited extended reporting period shall be offered with unimpaired limits of liability and shall be effective the same day as the termination of the policy; or
2. For all other claims-made liability insurance policies, a ~~two-year~~ one year extended reporting period shall be offered.

~~However, this shall not prohibit In addition, the insurer from may also offering offer greater or more limited extensions of time in which to report claims. No insurer shall deliver or issue for delivery a claims-made liability insurance policy in this Commonwealth unless such policy contains the applicable provisions set forth in this subsection.~~

~~B. Each insurer shall offer an extended reporting period that includes unimpaired limits of liability equal to the limits of the policy being extended. However, this shall not prohibit the insurer from also offering higher or lower limits of liability applicable to the extended reporting~~

~~period. No insurer shall deliver or issue for delivery a claims-made liability insurance policy in this Commonwealth unless such policy contains the applicable provisions set forth in this subsection. This subsection shall not apply to excess or umbrella liability coverage, or environmental impairment or pollution liability coverage, or to a limited extended reporting period of 60 days or less provided automatically without an additional premium charge; nor shall this subsection apply to any class, line, subclassification, or market segment exempted from this requirement by order of the commission. In the event the policy contains no basic extended reporting period or the insured purchases reinstated limits in whole or in part, the supplemental extended reporting period shall be effective the same day as the termination of the policy.~~

~~C. When an insurer excludes any existing coverage from a claims-made liability insurance policy and the policy remains in effect or is renewed, the insurer shall offer an extended reporting period for such coverage on the same basis that the extended reporting period would be offered if the entire policy were being terminated. For purposes of this subsection, the exclusion of any existing coverage shall not include changes in policy limits or deductibles.~~

14VAC5-335-45. Requirement to provide loss information.

If the policy is issued with an aggregate limit, the insurer shall provide loss information to the named insured with the notice of cancellation or nonrenewal of the claims-made policy or within 15 calendar days of the insured's request. The loss information shall include the aggregate amount of payments and reserves subject to the aggregate limit for any closed claims, open claims, or notices of occurrence for the period to which the aggregate applies.

14VAC5-335-50. Prohibitions.

A. ~~Once purchased by the insured, The supplemental extended reporting period coverage shall not be cancelled by the insurer without the consent of the insured except for nonpayment~~

of premium or fraud. ~~No extended reporting endorsement shall be delivered or issued for delivery in this Commonwealth unless it contains this provision.~~

B. ~~Except with respect to a limited extended reporting period of 60 days or less provided automatically without an additional premium charge, an insurer shall be prohibited from voiding~~
No insurer shall deny coverage under a supplemental extended reporting period coverage on the basis that other applicable insurance coverage is in effect. ~~However, this shall not prohibit an~~ An insurer from applying may apply the supplemental extended reporting period coverage as excess over ~~such~~ other insurance.

14VAC5-335-60. Severability.

If any provision of this chapter or ~~the~~ its application thereof to any person or circumstance is for any reason held to be invalid by a court, the remainder of ~~the~~ this chapter and the application of ~~such provision~~ the provisions to other persons or circumstances shall not be affected ~~thereby~~.