

**INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE**

Medical Malpractice Insurance – Mandatory Deductibles

Proposed New Rules: N.J.A.C. 11:27-3

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A.17:1-8.1, 17:1-15e and 17:30D-31 (P.L. 2004 c. 17, § 32)

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2004-420

Submit comments by December 31 , 2004 to:

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The agency proposal follows:

Summary

The New Jersey Medical Care Access and Responsibility and Patients First Act, P.L. 2004 c. 17, (the Act) approved June 7, 2004, was the Legislature's response to a medical malpractice liability insurance crisis in this State. The crisis created an affordability problem for physicians who indicated that escalating premiums directly caused some of them to leave New Jersey to practice elsewhere, scale back their practices or retire from the practice of medicine altogether. The Act was designed to address this affordability problem by reforming three primary components of the medical malpractice system: comprehensive tort reform; changes to New Jersey's health care system, and tightening the regulation of medical malpractice insurers.

The proposed new rules implement section 16 (codified as N.J.S.A. 17:30D-21) of the Act. The proposed new rules require authorized medical malpractice liability insurers to offer policies with deductibles, at the option of the insured, ranging from at least \$5,000 per claim on all policies, and up to \$1 million per claim on policies with limits of at least \$1,000,000 per occurrence and \$3,000,000 aggregate. It is not the intent of these rules to prohibit insurers from offering deductibles of less than \$5,000 on medical malpractice liability policies with low policy limits due to the nature of the risk, such as for certain nurses and dentists. The proposed new rules also require insurers to provide an appropriate premium reduction for any deductible chosen. Where required by N.J.S.A. 17:29AA-5 and N.J.A.C. 11:1-2, insurers must file a manual rule regarding the deductible options to be offered and the corresponding premium credits to be provided based upon the option selected. Finally, the proposed new rules also provide that insurers may require insureds to provide collateral for the deductible, and specify certain forms of collateral that shall be acceptable.

This rule proposal provides for a comment period of 60 days, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed new rules should have a positive social impact on health care providers and practitioners by affording to them an additional option to lower their medical malpractice insurance premiums. More specifically, allowing for various deductibles should put downward pressure on rates for those practitioners who opt for higher deductibles, and should benefit the majority of practitioners who do not have any claims history. This, in turn, should alleviate the

problem of limited access to certain types of healthcare in some areas of the State caused by practitioners terminating or curtailing their practices as a result of onerous medical malpractice insurance premium rates.

Economic Impact

The proposed new rules will have a positive economic impact on New Jersey health care providers and practitioners, insurers and the consumers. The deductible options should put downward pressure on rates for practitioners, particularly for those who chose higher deductibles. The costs incurred by insurers for providing the deductible options should be minimal, and part of their normal business expenses. Insurers should benefit as they will face less exposure depending on the size of the deductible selected. Consumers should also benefit, due to the expected changes in the marketplace that will likely result from this reform effort.

Federal Standards Statement

The proposed new rules are not subject to any Federal standards or requirements. Therefore a Federal standards analysis is not required.

Jobs Impact

To the extent that the Act provides options which, if exercised by policyholders, can reduce medical malpractice liability insurance rates, the number of practitioners choosing to retire, leave New Jersey or scale back their practices should decrease. Thus, these and the other rules implementing that Act should have a positive jobs impact on the medical community.

The Department invites commenters to submit any data or studies concerning the job impact of the proposed new rule.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the proposed new rules.

Regulatory Flexibility Analysis

Some New Jersey medical malpractice insurers may be small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules will impose compliance requirements on these entities. The purpose of the proposed new rules is to enable insureds of medical malpractice liability insurance policies to choose from a range of deductibles as a means of reducing the total premium on the policy. Insurers will be able to offer the deductible options utilizing existing resources. Compliance costs are discussed in the economic impact above. The Department does not believe that insurers will need to utilize any additional professional services in order to fulfill these new requirements. No differentiation based on business size is provided as a result of the proposed new rules. However, by allowing insurers to determine the amounts of the five or more deductibles to be offered, the rules afford to any affected small businesses the flexibility to establish the deductibles in amounts that best suit their individual circumstances.

Smart Growth Impact

The proposed new rules will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rule follows:

CHAPTER 27

MEDICAL MALPRACTICE LIABILITY INSURANCE

SUBCHAPTERS 1 AND 2 (RESERVED)

11:27-3.1 Purpose and Scope

(a) This subchapter sets forth the requirements applicable to deductibles which shall be offered by all authorized medical malpractice liability insurers on medical malpractice liability insurance policies transacted in this State.

11:27-3.2 Mandated deductible amounts

(a) All insurers authorized to transact medical malpractice liability insurance in this State shall offer medical malpractice liability insurance policies that include a range of at least five deductible amounts applicable to indemnity only, with the selection of the deductible to be at the option of the insured. The offered deductibles shall range from at least \$5,000 per claim on all policies regardless of the liability limits and up to \$1,000,000 per claim on policies with liability limits of at least \$1,000,000/\$3,000,000. Any medical malpractice liability insurance

policy that contains a provision that includes defense costs within policy limits shall conform to the standards set forth in N.J.A.C. 11:13-7.3(c).

1. Examples of deductibles which may be included in the range of five deductibles to be offered as set forth above are:

\$5,000 per incident, \$15,000 annual aggregate deductible
 \$10,000 per incident, \$30,000 annual aggregate deductible
 \$25,000 per incident, \$75,000 annual aggregate deductible
 \$50,000 per incident, \$150,000 annual aggregate deductible
 \$100,000 per incident, \$300,000 annual aggregate deductible
 \$150,000 per incident, \$450,000 annual aggregate deductible
 \$200,000 per incident, \$600,000 annual aggregate deductible
 \$250,000 per incident, \$750,000 annual aggregate deductible
 \$500,000 per incident, \$1.5 Million annual aggregate deductible
 \$750,000 per incident, \$2.25 Million annual aggregate deductible
 \$1 Million per incident, \$ 3 Million annual aggregate deductible
 Intermediate deductible amounts shall be interpolated accordingly.

11:27-3.3 Premium reduction for deductible

All authorized medical malpractice insurers shall provide an appropriate premium reduction for any deductible chosen by an insured pursuant to the above section.

11:27-3.4 Filing requirement

An insurer authorized to transact medical malpractice liability insurance in this State shall, where required by N.J.S.A. 17:29AA-5 and N.J.A.C. 11:1-2, file a manual rule on the deductible options offered pursuant to N.J.A.C. 11:27-3.2 and on the corresponding premium credits provided as required by N.J.A.C. 11:27-3.3.

11:27-3.5 Collateral for deductible

(a) All authorized medical malpractice insurers may require insureds to provide collateral for the deductible option chosen by the insured pursuant to N.J.A.C. 11:27-3.2.

1. Any collateral required shall be in an amount that bears a reasonable relationship to the amount of the deductible to be secured. Acceptable forms of collateral shall include surety bonds, irrevocable letters of credit issued by a bank, and such other forms as are deemed mutually agreeable by the insurer and insured.

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