

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

Medical Malpractice Liability Insurance

Proposed Readoption: N.J.A.C. 11:27

Authorized By: Thomas B. Considine, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:23-20 et seq., 17:29AA-1 et seq., 17:30D-17 et seq.
and 17:32-1 et seq.

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

Proposal Number: PRN 2010-102

Submit comments by September 4, 2010 to:

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The agency proposal follows:

Summary

The Department of Banking and Insurance (Department) proposes to readopt without amendment N.J.A.C. 11:27, which is scheduled to expire on June 6, 2010, in accordance with N.J.S.A. 52:14B-5.1b. In accordance with N.J.S.A. 52:14B-5.1c, the submission of this notice to the Office of Administrative Law extends the expiration date 180 days to December 3, 2010.

In the recent past, the medical malpractice liability insurance market has been strained in New Jersey, as well as throughout the nation. The issues of availability and affordability of medical malpractice liability insurance had been matters of concern. One ramification of availability and affordability problems with medical malpractice liability insurance is the potential negative impact such problems may have on adequate access to high-quality health care by New Jersey residents. To that end, the Legislature enacted the New Jersey Medical Care Access and Responsibility and Patients First Act, P.L. 2004, c. 17 (the Act), which provided various reforms to address the vital interests of the State in ensuring that health care practitioners can continue to provide high-quality health care, and that such health care continues to be available to residents of this State. The Department adopted various rules to implement the Act beginning in 2005, with the latest rules adopted in June of 2009.

The rules in the chapter proposed for readoption continue to provide standards to implement specific provisions of the Act or otherwise further the goals of the Act to ensure access to high-quality health care by residents of this State.

N.J.A.C. 11:27-1 sets forth general provisions regarding the rules' purpose, scope and separability.

N.J.A.C. 11:27-2 implements N.J.S.A. 17:30D-20 by providing for an optional policy provision in medical malpractice liability insurance policies that contain a "consent by the

insured to settle,” to waive that provision by way of endorsement, and to require insurers to provide a premium reduction reflecting any savings or reduced costs if the endorsement providing for a waiver of the “right to consent to settle” provision is selected.

N.J.A.C. 11:27-3 implements N.J.S.A. 17:30D-21 by specifying the requirements applicable to mandatory deductibles that shall be offered by all authorized medical malpractice liability insurers on medical malpractice liability insurance policies issued in this State.

N.J.A.C. 11:27-4 implements N.J.S.A. 17:30D-26 by providing minimum standards for premium payment installments.

N.J.A.C. 11:27-5 implements N.J.S.A. 17:30D-22 by prohibiting increases in premiums upon the renewal of New Jersey medical malpractice liability policies on the basis of claims filed against insureds where the insured is dismissed from a civil action based upon that claim at an early stage of the civil proceeding.

N.J.A.C. 11:27-6 implements N.J.S.A. 17:30D-24 by specifically providing that medical malpractice liability insurers shall comply with N.J.A.C. 11:1-20 with regard to notices of renewal and non-renewal of medical malpractice liability insurance policies.

N.J.A.C. 11:27-7 implements N.J.S.A. 17:30D-28 through 30 by setting forth procedures for the establishment of the Medical Malpractice Liability Insurance Premium Assistance Fund (MMLIPAF). The Department recognizes that the MMLIPAF had a statutorily prescribed duration of three years and is currently inactive.

N.J.A.C. 11:27-8 implements N.J.S.A. 17:30D-18 by establishing prohibitions upon concurrently serving as an officer, director or board member of a professional association of health care providers and in such a capacity with a domestic medical malpractice liability insurer.

N.J.A.C. 11:27-9 implements N.J.S.A. 17:30D-19 by establishing rules for the formation and operation of medical malpractice liability insurance purchasing alliances.

N.J.A.C. 11:27-10 implements N.J.S.A. 17:30D-27 by establishing the requirements for structured settlements and the furnishing of bonds.

N.J.A.C. 11:27-11 establishes reporting requirements regarding reinsurance agreements and loss reserves established by insurers that are writing medical malpractice liability insurance in this State.

N.J.A.C. 11:27-12 sets forth minimum requirements for the independence of the board of directors and the committees of the board of directors of an insurer that is writing medical malpractice liability insurance in this State.

N.J.A.C. 11:27-13 provides for the biannual reporting of information related to rate modifiers used by medical malpractice liability insurers writing physicians and surgeons coverage in this State.

The Department has reviewed these rules, and has determined that they continue to be necessary, reasonable and proper for the purposes for which they were originally promulgated.

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

Social Impact

The rules proposed for readoption will have a positive social impact by continuing to provide the regulatory framework to implement specific statutory requirements of the Act as well as to further the goals of the Act to help ensure that access to high-quality health care is afforded

to the residents of this State. Failure to readopt these rules would frustrate the Legislative policies established by the Act and would eliminate guidance to insurers, providers, and the public regarding the implementation of the Act. Moreover, failure to readopt these rules would result in disruptions to the medical malpractice liability insurance market, which could negatively affect the availability or affordability of such insurance, which ultimately could threaten access to high-quality health care to residents of this State.

Economic Impact

Virtually all of the requirements in the rules proposed for readoption are directly imposed by the Act, or otherwise further the goals of the Act. The types of professional services required to comply with the rules proposed for readoption will continue to be claims management, accounting, actuarial and legal. The Department believes that compliance will continue to be achieved by use of existing staff or services already contracted for by the insurer or purchasing alliance. Insurers and physicians seeking to form a medical malpractice purchasing alliance will continue to be required to bear any costs associated with compliance of these rules. Many of these costs have already been absorbed by insurers or physicians forming a purchasing alliance, and little additional economic impact will be imposed by the readoption of these rules.

As noted in the Social Impact above, the Department believes that failure to readopt these rules will result in increased costs to the market, providers, and the public by eliminating ongoing guidance regarding the requirements of the Act and threatening adequate access to healthcare in this State. Thus, the benefits derived from the readoption of the rules outweigh the costs of compliance they impose upon affected parties. Interested parties who possess data in the

nature of a cost-benefit analysis are invited to submit that data as a comment upon the proposed readoption.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption are not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the rules proposed for readoption.

The Department invites commenters to submit any data or studies on the potential jobs impact of the rules proposed for readoption together with their comments on other aspects of the proposal.

Agriculture Industry Impact

The rules proposed for readoption will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The rules proposed for readoption will continue to apply to “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that the rules proposed for readoption apply to small businesses, they will apply to insurers transacting medical malpractice liability insurance in this State as well as to physicians seeking

to form a medical malpractice purchasing alliance. Compliance requirements are discussed under the Summary above. The costs that will continue to be imposed are set forth in the Economic Impact above. The rules proposed for re adoption do not provide any different reporting, recordkeeping or other compliance requirements specifically based on business size. The Department notes that N.J.A.C. 11:27-11 currently does not apply to insurers with less than \$1,000,000 of direct written premium in medical malpractice liability insurance on a countrywide basis as of December 31 immediately preceding, or to insurers with less than \$1,000,000 of direct written premiums in medical malpractice liability insurance in this State as of December 31 immediately preceding and which do not write coverage for physicians and surgeons for the relevant period. Premium volume is indicative of business size. In any event, as noted in the Economic Impact above, the Department does not believe that the rules proposed for re adoption will impose any new or undue burden on regulated entities. The purpose of the rules proposed for re adoption is to implement specific provisions of the Act as well as to further its goals of helping to ensure access to high-quality health care to residents of this State. These goals do not vary based on business size.

Smart Growth Impact

The rules proposed for re adoption will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption will not have an impact on housing affordability in this State in that the rules proposed for readoption relate to medical malpractice liability insurance in this State.

Smart Growth Development Impact

The rules proposed for readoption will not have an impact on smart growth in this State and there is an extreme unlikelihood that the rules would evoke a change in the housing production in Planning Areas 1 and 2, or within designated centers under the State Development and Redevelopment Plan in New Jersey in that the rules proposed for readoption relate to medical malpractice liability insurance.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:27.