

SPECIAL ADOPTION

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE

Medical Malpractice Liability Insurance Premium Assistance Fund – Premium Subsidy

Special Adopted and Concurrent Proposed New Rules: N.J.A.C. 11:27-7

Special New Rules Adopted and Concurrent Proposed New Rules Authorized: November 17, 2004 by Holly C. Bakke, Commissioner, Department of Banking and Insurance, in consultation with Clifton R. Lacy, M.D., Commissioner, Department of Health and Senior Services; the New Jersey State Board of Medical Examiners, New Jersey State Board of Chiropractic Examiners, New Jersey State Board of Dentistry, and New Jersey State Board of Optometry, all within the Division of Consumer Affairs, Department of Law and Public Safety; and Kevin P. McCabe, Commissioner, Department of Labor and Workforce Development

Filed: November 17, 2004 as R.2004 d. 461

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, and 17:30D-28 et seq.

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

Concurrent Proposal Number: PRN 2004-471

Effective Date: November 17, 2004

Expiration Date: May 17, 2005

Submit written comments by February 18, 2005 to:

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These rules were adopted in accordance with N.J.S.A. 17:30D-29g and became effective upon filing with the Office of Administrative Law. Concurrently, the provisions of these new

rules are being proposed for re-adoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted new rules will become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-6.4(f)) if filed on or before the six-months expiration date in accordance with N.J.S.A. 17:30D-29g.

The special adoption and concurrent proposal follows:

### Summary

The New Jersey Medical Care Access and Responsibility and Patients First Act, P.L. 2004, c. 17 (the Act), provides various reforms to address the vital interest to the State of ensuring that health care practitioners can continue to provide high-quality health care, and to ensure that such health care continues to be available to the residents of this State, including access to a full spectrum of health care providers, including highly trained physicians in all specialties. One of the developments that the Legislature determined has affected access to care is the rising premiums for medical malpractice liability insurance which has led to increasing reports of doctors retiring or moving to other states where insurance premiums are lower, dropping high-risk patients and procedures, and practicing "defensive medicine" in a manner that may significantly increase the cost of health care for New Jersey's citizens. In order to address these issues, the Act provides for a comprehensive set of reforms affecting the State's tort liability system, health care system and medical malpractice liability insurance carriers to ensure that the full spectrum of health care services continue to be available and accessible to residents of the State and to enhance patients' safety at health care facilities.

One of the means by which the Act seeks to achieve these goals is the establishment of the Medical Malpractice Liability Insurance Premium Assistance Fund (the Fund), which is intended to provide premium subsidies to certain practitioners and health care providers, as defined in the Act, to help ensure that access to care in particular specialties or subspecialties is not threatened as a result of the cost of medical malpractice liability insurance in this State. Monies to be distributed from the Fund are to be obtained through assessments, on a per employee basis, upon all employers subject to the New Jersey Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq.; and upon physicians and podiatrists, chiropractors, dentists, optometrists, and persons licensed to practice law in this State. See N.J.S.A. 17:30D-29. Pursuant to the Act, the Department of Banking and Insurance (Department) is responsible to administer the Fund, but is not responsible to assess those subject to the assessments as set forth above. Those duties fall to the respective licensing authorities and the Department of Labor and Workforce Development (LWD) as referenced in the proposed rules, and to the State Treasurer (as to attorneys).

The Department is proposing these new rules to provide for the administration of the Fund, determination of eligibility for payments from the Fund, and determinations of increases in medical malpractice liability insurance premiums that would qualify for a subsidy in accordance with N.J.S.A. 17:30D-30b.

A section by section summary of the proposed new rules follows.

Proposed N.J.A.C. 11:27-7.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:27-7.2 sets forth the definitions of terms used throughout the subchapter.

Proposed N.J.A.C. 11:27-7.3 sets forth the procedures for assessments by the Boards of Medical Examiners, Chiropractic Examiners, Dentistry and Optometry (Boards), and for the assessment of employers by LWD. Although the Department is not responsible for collecting the fee from doctors, chiropractors, dentists or optometrists, or from employers, in accordance with the statutory scheme giving it a means to implement the measures necessary to assure that funds are available to make disbursements as quickly as possible, and in collaboration with the Boards and LWD, the Department is incorporating in its proposed rules the procedures to be implemented for the assessment of the Boards' respective licensees and of employers.

Proposed N.J.A.C. 11:27-7.4 sets forth the information the Department will request from insurers and other entities transacting medical malpractice liability insurance in this State to enable the Department to determine what premium increases have occurred by specialty and subspecialty and to enable the Department to determine eligibility of class or classes of practitioners and qualifying increases for subsidies in accordance with the Act.

As required by N.J.S.A. 17:30D-30a(2), proposed N.J.A.C. 11:27-7.5 sets forth the methodology and procedures for the determination of eligibility of the class or classes of practitioners and health care providers eligible for the subsidy by specialty or subspecialty, and for providing subsidies to such eligible practitioners and providers from the Fund. The proposed new rules do not expressly identify those classes that are eligible or the specific increases that will qualify for receipt of the subsidy. The Department will issue a public notice based upon the information received pursuant to the proposed new rules, and in consideration of other standards, such as whether access to care is threatened for a particular specialty or subspecialty in a particular geographic area of the State. The public notice shall set forth those classes of specialties and subspecialties proposed to be eligible to apply to receive a subsidy from the Fund,

the amount available for distribution or projected to be available, and the proposed amounts of the increases in premium and funding obligations that will qualify for the subsidy.

The public notice will be disseminated through the Department's distribution list as well as posted on the Department's website. In addition, the public notice will be published in the New Jersey Register. The public notice also will provide to interested parties an opportunity to submit written comment upon its content within 30 days of posting the notice on the Department's website. After giving due consideration to any comments received, the Commissioner of Banking and Insurance (Commissioner) shall issue an order designating the eligible classes of practitioners, and the amounts of qualifying increases and funding obligations eligible for the subsidy.

The Department believes this approach is reasonable and appropriate insofar as the Fund is in existence for only three years, and because the Department is not in a position at this time to determine those classes eligible or the amounts of increases which will qualify for receipt of the subsidy without first having received and reviewed the relevant information and data. In addition, these determinations are likely to change for each of the three years based on changes in the market and access to care. Articulating explicit numeric standards in the rules would necessitate separate proposed amendments and adoptions each year, which would not be a practical or feasible process to provide subsidies in a timely manner to eligible practitioners and health care providers for the relevant year. Interested parties will be afforded sufficient notice and opportunity for input on the standards to be utilized each year by being provided a 30-day period within which to submit written comments on the Department's proposed findings which will be set forth in the public notices referenced above.

Proposed N.J.A.C. 11:27-7.6 sets forth the process by which practitioners who are eligible to apply for a subsidy from the Fund may file an application with the Department. The application will be provided on the Department's website and shall be filed electronically in accordance with the instructions set forth therein.

Proposed N.J.A.C. 11:27-7.7 provides that the amount of the subsidy to be distributed for the relevant period shall be in the proportion that the qualifying increases in premiums and funding obligations for all eligible classes relate to the total amount of monies collected and allocated for distribution pursuant to N.J.S.A. 17:30D-29e(1) less administrative costs incurred in administering the Fund.

Proposed N.J.A.C. 11:27-7.8 sets forth a condition subsequent upon the receipt of the subsidy and penalties for violations of the subchapter. Specifically, the proposed new rule recognizes the requirement in N.J.S.A. 17:30D-30d(1), which provides that a practitioner who receives a premium subsidy pursuant to N.J.S.A. 17:30D-30 shall thereafter be required to continue to practice at least to the same extent in that practitioner's specialty or subspecialty in this State for a period of at least two years after the issue date of the subsidy. The proposed new rule sets forth acceptable reasons for which the Commissioner shall approve a waiver of the two-year service requirement and the procedures to request such a waiver.

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 proposed new rules implement the intent of the Legislature as set forth in N.J.S.A. 17:30D-28 et seq. by providing for the administration of the Fund, including determinations of classes of practitioners and health care providers eligible to receive subsidies from the Fund, and determinations of increases in medical malpractice liability insurance that qualify for a premium subsidy. Accordingly, the proposed new rules will help achieve the goal of the Legislature by continuing to afford access to high-quality health care in all specialties and subspecialties to the citizens of New Jersey.

### Economic Impact

Various licensees and employers/employees will be required to pay the assessment as set forth in N.J.S.A. 17:30D-29b. This impact, however, is not imposed by these proposed rules but rather by statute. Practitioners and health care providers eligible to receive premium subsidies who incur an increase in medical malpractice liability insurance premium that qualify for the subsidy will have a portion of those increases defrayed. This, in turn, implements the intent of the Legislature to help ensure that access to medical care is not threatened due to the cost of medical malpractice liability insurance premiums. Accordingly, any costs that may be imposed under the statutory scheme as implemented by these rules is outweighed by the benefits to be achieved. In addition, insurers and other entities providing medical malpractice liability insurance will incur costs associated with compiling and providing the data required pursuant to N.J.A.C. 11:27-7.4. Practitioners and providers seeking to obtain a subsidy will incur any costs related to completing the application required pursuant to N.J.A.C. 11:27-7.6. The Department believes that any such costs that may be imposed on these entities or applicants will be minimal

in that the information required should be readily available or already compiled in the normal course of business.

#### Federal Standards Statement

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

#### Jobs Impact

The proposed new rules should not result in the generation or loss of jobs. However, as noted above, the purpose of the proposed new rules is to provide for the administration of the Fund to provide premium subsidies to those eligible classes of practitioners and health care providers who have incurred qualifying increases in medical malpractice liability insurance premiums. Accordingly, threats to access to care based on costs of medical malpractice liability insurance premiums should be reduced, thereby contributing to the health care system of the State of New Jersey. This, in turn, should positively contribute to the overall business climate of this State.

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

#### Agriculture Industry Impact

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

### Regulatory Flexibility Analysis

The proposed new rules will apply to "small businesses," as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The small businesses to which the proposed new rules will apply include those licensees and employers subject to the assessment. However, this impact is imposed not by these proposed new rules but by the statute at N.J.S.A. 17:30D-29b. The proposed new rules will also apply to small businesses that are insurers or other entities transacting medical malpractice liability insurance business with respect to the data requests regarding premium and exposure amounts for various medical malpractice liability insurance policies by specialty or subspecialty. However, the Department believes that any additional costs associated with providing the required data should be minimal and that these entities should have this information readily available.

Further, those practitioners and health care providers seeking to obtain a premium subsidy will be required to file an application in accordance with the proposed new rules. However, such application is at the option of the practitioner or provider.

The Department does not believe that any additional professional services will be required to comply with the proposed new rules.

The proposed new rules provide no differentiation in reporting, recordkeeping or other compliance requirements based on business size. As noted above, the proposed new rules provide for the administration of the Fund for the determination of eligibility for premium subsidies pursuant to the Act. In order to accurately determine those classes eligible and the amounts of increase in medical malpractice liability insurance premium that would qualify for the premium subsidy pursuant to the Act, the Department requires that companies supply certain information regarding the current premiums paid to all medical malpractice insurers, regardless

of size. Moreover, the determinations to be made by the Department on eligible classes of practitioners and qualifying premium increases do not vary based on the business size of the insurers of prospective subsidy recipients.

For the forgoing reasons, the proposed new rules provide no differentiation in compliance requirements based on business size.

#### Smart Growth Impact

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

Full text of the emergency adoption and concurrent proposed new rules follows:

CHAPTER 27

MEDICAL MALPRACTICE LIABILITY INSURANCE

SUBCHAPTERS 1. – 6. (RESERVED)

SUBCHAPTER 7. MEDICAL MALPRACTICE LIABILITY INSURANCE PREMIUM ASSISTANCE FUND – PREMIUM SUBSIDY

11:27-7.1 Purpose and scope

(a) The purpose of this subchapter is to set forth procedures for the assessment of certain practitioners and employers for the Fund, and the procedures and methodology for determining eligibility for, making application for, and determining the amount of disbursements from the Fund of medical malpractice liability insurance premium subsidies pursuant to N.J.S.A. 17:30D-28 through 17:30D-30.

(b) This subchapter shall apply with respect to assessments of certain practitioners and employers for the Fund pursuant to N.J.S.A. 17:30D-29, and to any person seeking a disbursement from the Fund of a premium subsidy pursuant to N.J.S.A. 17:30D-28 through 17:30D-30.

11:27-7.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Board” or “Boards” means the New Jersey State Board of Medical Examiners, New Jersey State Board of Chiropractic Examiners, New Jersey State Board of Dentistry, and New Jersey State Board of Optometry.

“Bona fide office” means a practice location at which a licensee engages in any activity or provides any service for which possession of a license is statutorily required or otherwise mandated by virtue of the job description, specification or qualifications. A “bona fide office” shall include a private practice setting, at a hospital, educational institution, research facility, governmental agency or a business. The accessibility of a licensee at the practice location to members of the public in person or by telephone shall not be a determinative factor.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Completely retired” means a licensure status established by a licensee's affirmative election of an inactive status at renewal pursuant to N.J.S.A. 45:1-7.3, or through a submission of other written notice, where authorized by the professional practice act to obtain a certificate of retirement. During the time that a licensee is “completely retired,” no practice of the profession, within the meaning of this definition, is authorized, including, but not limited to, the prescribing of medications, if authorized within the scope of practice. Physicians, 65 years or older, without hospital or health maintenance organization affiliation, holding a reduced fee license, issued pursuant to N.J.S.A. 45:9-19.16, shall be deemed active licensees and shall not be deemed “completely retired.”

“Department” means the New Jersey Department of Banking and Insurance.

“Fund” means the Medical Malpractice Liability Insurance Premium Assistance Fund established pursuant to N.J.S.A. 17:30D-29.

“Health care provider” is as defined at N.J.S.A. 17:30D-28.

“Joint insurance fund” means a fund formed by two or more entities to provide liability insurance coverage pursuant to N.J.S.A. 17:49A-1 et seq, 18A:18B-1 et seq., 18A:18B-25.33 et seq., or 40A:10-36 et seq.

“Licensee” means an individual licensed by a Board.

“Practitioner” is as defined at N.J.S.A. 17:30D-28.

“Qualifying increase” means an increase in medical malpractice liability insurance premiums paid by a practitioner or the self-insured funding obligation of a health care provider eligible to receive a subsidy from the Fund determined by the Commissioner pursuant to N.J.A.C 11:27-7.5.

“Risk retention group” is as defined at N.J.S.A. 17:47A-2.

“Statutorily or constitutionally barred from practice” means a licensure status, including those whose licenses have been revoked or actively suspended by a disciplinary order of the Board or suspended by operation of N.J.S.A. 45:1-7.1, for failing to timely renew a license after its expiration.

11:27-7.3 Assessments of employers and certain practitioners

(a) In accordance with N.J.S.A. 17:30D-29, notices imposing an annual charge in the sum of \$75.00 shall be issued on behalf of the Boards to every physician, podiatrist, chiropractor, dentist and optometrist:

1. Who holds an active license granted on a date one year or more before the date on which the notices are sent;

2. Whose practice is not currently barred or prohibited by statute as unlicensed practice:

i. As a result of the entry of a disciplinary order of the Board revoking or suspending full licensure privileges; or

ii. As a result of the failure to timely renew an expired license, pursuant to N.J.S.A. 45:1-7.1; and

3. Who is not completely retired from the practice of the profession.

(b) A notice recipient may claim an exemption from the requirement to pay the annual charge upon an attestation that he or she:

1. Is currently on full-time duty with any branch of the armed services, VISTA or the Peace Corps and not required to maintain a New Jersey license to perform duties, if assigned to such duties in New Jersey; or

2. Does not maintain a bona fide office for the practice of the profession in New Jersey.

(c) Each physician, podiatrist, chiropractor, dentist, and optometrist receiving a notice, who does not claim an exemption, shall remit the annual charge, as directed, within 30 days of the receipt of the notice.

(d) Any physician, podiatrist, chiropractor, dentist, or optometrist receiving a notice, who seeks to claim an exemption, shall return the notice, as directed, along with an attestation as to the facts upon which the claim is based, within 30 days of the receipt of the notice.

(e) Any exempt licensee who, as a result of changed circumstances, is no longer entitled to that exemption shall provide notice to his or her respective Board of the change and the date on which the change occurred and remit the full annual charge, within 30 days of the

date of the change. The obligation to remit the charge shall accrue on the date of the change in circumstance.

(f) Any licensee who did not hold an active license at the time that the notices were issued and who seeks restoration of an active license during the calendar year following the issuance of the notices, shall be required to remit the annual charge prior to the restoration of the license.

(g) The Boards shall maintain a list of all of their respective licensees who have not paid the annual charge, so that appropriate enforcement action may be pursued against licensees who have failed to either remit payment or claim an exemption.

(h) The Department of Labor and Workforce Development (LWD) shall annually assess all employers who are subject to the Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq., the surcharge prescribed in N.J.S.A. 17:30D-29. Such surcharge may be combined with other assessment or revenue collection activities of the LWD and sent to subject employers. Employers may elect to recover the assessment from their employees by a payroll deduction in an amount not to exceed \$3.00 annually from each covered employee as long as the prescribed surcharge continues in legislative effect.

(i) The surcharge collected by LWD shall be based on the number of discrete social security numbers reported on form WR-30 by each employer subject to N.J.S.A. 17:30D-29 for the immediately preceding calendar year. Thus, the surcharge for calendar years 2004, 2005 and 2006 shall be based on employment reported for calendar years 2003, 2004 and 2005, respectively. An employer who believes it is not subject to this surcharge or who believes the surcharge has been calculated incorrectly may submit a written request for reconsideration thereof to the Director, Division of Accounting, New Jersey Department of Labor and Workforce

Development, within 30 days of receipt of the surcharge. Such request must stipulate the legal bases upon which the claim of non applicability is based.

11:27-7.4 Data requests

(a) The Department shall request that insurers and other entities providing medical malpractice liability insurance in this State provide the following information with respect to data as of December 31, 2004, 2005 and 2006:

1. The company's base rates (based on \$1 million/\$3 million limits). The rates should be provided for each rating tier (for example, preferred, standard, etc), each policy form (occurrence, claims-made), and by each specialty and subspecialty;

2. The company's in-force exposures, by policy form, by rating tier, and by specialty and subspecialty, for all limits combined;

3. The company's average written premiums, including all factors, surcharges, discounts, etc., per exposure by policy form, by rating tier, by specialty and subspecialty; and

4. Such other data from an insurer or other entity as the Commissioner may conclude is necessary in order to determine the class or classes of specialties or subspecialties which will be eligible for a subsidy and the amount of any qualifying premium and professional liability funding obligation increase or increases as referenced in N.J.A.C. 11:27-7.5(a) and (b).

(b) For purposes of complying with the data request, the following instructions shall apply. For base rates, the claims-made rates are for mature claims-made only. For claims-made exposures and average premiums, companies should show the exposures and average premiums for all claims-made steps combined. For all base rates, exposures, and average premiums,

companies should provide the specialties and subspecialties by name, company class code, and Insurance Services Office (ISO) class code.

(c) The requested information should be provided electronically on Excel spreadsheets in a form provided by the Department and available on the Department's website at [www.state.nj.us/dobi/data/njmedmalsurvey.xls](http://www.state.nj.us/dobi/data/njmedmalsurvey.xls) no later than 30 days after the Department's request for the data or the end of the relevant reporting period, whichever is later, and sent to [MMLIPA@dobi.state.nj.us](mailto:MMLIPA@dobi.state.nj.us).

#### 11:27-7.5 Determination of eligibility

(a) The Commissioner shall determine the class or classes of practitioners eligible for the subsidy, by specialty or subspecialty, for each type of practitioner whose average medical malpractice liability insurance premium, as a class, on or after December 31, 2002, is in excess of an amount determined by the Commissioner based upon a review of the information filed pursuant to N.J.A.C 11:27-7.4 and in accordance with N.J.S.A. 17:30D-30. In determining the relevant premium amounts, the Commissioner shall review and consider, without limitation, the premiums paid or charged by insurers transacting business in this State for medical malpractice liability insurance in this State. In certifying the class or classes of practitioners eligible to receive the subsidy, the Commissioner may, in consultation with the Commissioner of the Department of Health and Senior Services, also consider whether access to care is threatened by the inability of a significant number of practitioners in a particular specialty or subspecialty to continue practicing in a geographic area of the State.

(b) Practitioners in a class certified by the Commissioner in accordance with (a) above, including those whose medical malpractice liability insurance coverage is supplied by

health care providers who provide professional liability insurance through self-insured hospital funding supplemented with purchased commercial insurance coverage, shall be eligible for a subsidy if:

1. The practitioner received an increase in medical malpractice liability insurance premiums in excess of an amount determined by the Commissioner based on a review of the information filed pursuant to N.J.A.C 11:27-7.4 for one or more of the following: upon policy inception or renewal on or after January 1, 2004, January 1, 2005, and January 1, 2006, from the amount paid in the immediately preceding calendar year(s); or

2. In the case of practitioners whose medical malpractice liability coverage is supplied by health care providers in the manner set forth in (b) above, the Commissioner determines that the health care provider increased its total professional liability funding obligation in excess of an amount determined by the Commissioner based on a review of the information filed pursuant to N.J.A.C 11:27-7.4 for one or more of the three year periods set forth in (b)1 above.

(c) Pursuant to N.J.S.A. 17:30D-30, the Commissioner may waive the criteria for eligibility if he or she determines that access to care for a particular specialty or subspecialty is threatened because of an inability of a sufficient number of practitioners in that specialty or subspecialty to practice in a geographic area of the State.

(d) For purposes of determining the qualifying increases incurred by practitioners in the class or classes of specialties or subspecialties set forth (b) above, the Commissioner shall consider the increases in the base rate for medical malpractice liability insurance for such practitioners imposed by each medical malpractice liability insurer, reciprocal insurance exchange, risk retention group and joint insurance fund providing such coverage in this State and

the increase in the self-insured funding obligation of the health care providers referenced in (b) above, and such other information as the Commissioner may conclude is relevant to that determination, including information received in accordance with the procedure set forth in (f) below.

(e) In considering the extent to which access to care is threatened as referenced in (a) and (c) above, the Commissioner shall consider information from relevant studies, reports, practitioners, practitioner trade associations, the Department of Health and Senior Services, the Department's internal analysis, and any other relevant data the Commissioner deems appropriate.

(f) The certification of eligible classes and determination of practitioner and health care provider eligibility shall be made annually as set forth below.

1. The Department shall issue a public notice no later than January 31 of each year setting forth those classes of specialties and subspecialties proposed to be eligible to apply to receive a subsidy from the Fund, the amount available for distribution or projected to be available, and, if applicable, the proposed amounts of the increases in premium and funding obligations referenced, respectively, in (b)1 and 2 above. The public notice shall be disseminated to those interested parties on the Department's distribution list utilized pursuant to N.J.A.C 1:30-5.2(a)6, and shall also be posted on the Department's website: [www.njdobi.org](http://www.njdobi.org). In addition, the public notice shall be published in the New Jersey Register. The public notice shall also provide that interested parties shall have 30 days to provide written comments on the Department's determinations.

2. After giving due consideration to any comments received, the Commissioner shall thereafter issue an Order establishing the classes eligible, and, if applicable, the amounts of the qualifying increases and funding obligations to be utilized as set forth in (b)1

and 2 above. The Order shall be disseminated to those interested parties on the Department's distribution list utilized pursuant to N.J.A.C. 1:30-5.2(a)6, and to all persons who submitted written comments on the public notice referenced in (f)1 above, and shall also be posted on the Department's website: [www.njdobi.org](http://www.njdobi.org) . In addition, the Order shall be published in the New Jersey Register. The Order shall constitute a final agency decision.

(g) Notwithstanding (a) through (f) above, pursuant to N.J.S.A. 17:30D-30c, a practitioner who has been subject to disciplinary action or civil penalty by the practitioner's respective Board pursuant to N.J.S.A. 45:1-21, 45:1-22 or 45:1-25, when that action or penalty relates to the practitioner's provision of, or failure to provide, treatment or care to a patient, shall not be eligible to receive a subsidy from the Fund.

#### 11:27-7.6 Application process

(a) Practitioners and healthcare providers deemed eligible to apply for a subsidy from the Fund as provided in N.J.A.C. 11:27-7.5 shall file an application in a form to be prescribed by the Department and posted on the Department's website at [www.njdobi.org](http://www.njdobi.org) . The information provided in the application shall include , but not be limited to, the following:

1. Applicant's name, address, day time telephone number and business address;
2. Applicant's e-mail address;
3. Applicant's type of licensure and license number;
4. Information related to the type of practice; and
5. Information related to the applicant's medical malpractice liability insurer, including insurer name, policy dates and limits of liability.

(b) Applications shall be filed electronically in accordance with the instructions set forth on the application.

(c) Applications shall be filed no later than 30 days after the issuance by the Commissioner of the Order referenced in N.J.A.C. 11:27-7.5(f) specifying the eligible classes of practitioners and healthcare providers and the qualifying increases in medical malpractice liability insurance premiums and self-funded obligations from the immediately preceding year.

(d) No application shall be accepted if the licensee is required to pay the annual assessment referenced in N.J.A.C. 11:27-7.3 but has not paid the assessment by the due date on the notice.

#### 11:27-7.7 Distribution of funds

(a) The amount of the subsidy to be distributed for a relevant period shall be in the proportion that the qualifying increases in premiums and funding obligations for all eligible classes relate to the total amount of monies collected and allocated for distribution pursuant to N.J.S.A. 17:30D-29e(1), less administrative costs incurred in administering the Fund.

(b) Payments pursuant to (a) above shall be disbursed to each eligible applicant or to the applicant's designee as soon as practicable after the termination of the application period as set forth in N.J.A.C. 11:27-7.6(c).

#### 11:27-7.8 Practice requirement and penalties

(a) Pursuant to N.J.S.A. 17:30D-30d(1), a practitioner who receives a premium subsidy pursuant to N.J.S.A. 17:30D-30 shall thereafter be required to continue to practice at least to the same extent (for example, full-time or part-time, and no restriction in specialty or

subspecialty) in that practitioner's specialty or subspecialty in this State for a period of at least two years from the issue date of the subsidy. A practitioner may seek a waiver of the two-year practice continuation requirement by filing a certification with the Commissioner that sets forth the reason(s) the practitioner is or will be unable to fulfill the minimum two-year practice requirement. The Commissioner shall grant the waiver of completion of the minimum two-year practice requirement only for the following reasons:

1. Disabled and therefore unable to practice in the specialty or subspecialty prior to the end of the service period;
2. Death;
3. Extended maternity leave beyond the period of disability;
4. Full-time duty with the armed forces, VISTA or the Peace Corps; or
5. Leave taken in accordance with the New Jersey Family Leave Act, N.J.S.A. 34:11B-1 et seq., or the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 et seq.

(b) In the event it is determined that the practitioner filed a certification which contained false or inaccurate information, the Department shall refer the matter to the appropriate Board for disciplinary action.

(c) If a practitioner who received a premium subsidy fails to satisfy the minimum two-year practice requirement set forth in (a) above, fails to obtain a waiver of such requirement, falsified data on his or her application, or otherwise is found not to have been or continue to be entitled to receive the subsidy, the practitioner shall be required to repay the amount of the subsidy, in whole or in part.

(d) In addition to (c) above, any person who violates the provisions of this subchapter may be subject to the imposition of any other penalties as authorized by law.

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