

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

Medical Malpractice Reporting Requirements

Adopted Amendments: N.J.A.C. 11:1-7.1, 7.2 and 7.3

Proposed: November 1, 2004 at 36 N.J.R. 4870(a).

Adopted: October 24, 2005 by Donald Bryan, Acting Commissioner, Department of Banking and Insurance.

Filed: October 25, 2005 as R.2005 d.407, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:30D-17(a) and (b) and P.L. 2004, c. 17.

Effective Date: November 21, 2005

Expiration Date: July 30, 2006.

Summary of Public Comments and Agency Responses:

The Department received comments from Pringle Quinn Anzano on behalf of ProSelect Insurance Company, Princeton Insurance Company, MD Advantage Insurance Company of New Jersey, and the New Jersey State Society of Anesthesiologists.

1. COMMENT: One commenter expressed its support for the Department's proposal for purposes of increased patient safety.

RESPONSE: The Department thanks the commenter for its support.

2. COMMENT: One commenter questioned whether the proposed amendments apply to insurance exchanges writing medical malpractice insurance. The commenter stated that if not, the Department may not effectively accomplish the

statutory reforms anticipated in the enabling legislation and could place non-insurance exchanges at a distinct market disadvantage.

RESPONSE: Yes, pursuant to its authority under N.J.S.A. 17:50-1 et seq. and N.J.A.C. 11:1-28, the Department intended that the amendments apply to insurance exchanges.

3. COMMENT: One commenter expressed its appreciation for the Department's attempt to reduce insurers' administrative burdens at proposed N.J.A.C. 11:1-7.3(g) by permitting required information to be provided to the Department on either the Medical Malpractice Payment Report form of the National Practitioner Data Bank (NPDB) or its equivalent as produced on the Department's website. According to the commenter, the NPDB form is accessed online, and cannot be submitted electronically to the Department. The commenter also stated that approximately 30 percent of the information on a completed NPDB form relates to practitioner identifying information, and would need to be deleted in order to comply with this proposed provision. The commenter stated that the Department needs to develop an online form, and suggested that the Department coordinate with the State Board of Medical Examiners in developing such a form.

Another commenter expressed concern that proposed N.J.A.C. 11:1-7.3(g) does not specifically protect information submitted to the Department related to claimants, and suggested that the rules specifically state that all necessary steps will be taken by the Department to ensure such information will remain confidential.

RESPONSE: The Department agrees with the commenters that it would not be practical for insurers to use the Medical Malpractice Payment Report form of the National Practitioner Data Bank (NPDB). Accordingly, the Department is revising N.J.A.C. 11:1-7.3(g) to request that insurers provide the Department with only a portion of the same information appearing on the NPDB form (that is, only the information that is relevant for purposes of tracking medical malpractice awards in order to identify trends in the marketplace, and not any information concerning claimants or the identity of practitioners). Moreover, at this time the Department is not requiring that insurers provide this information on any specific form. As a result of these changes to its original proposal, it will be less burdensome for insurers to comply with the Department's reporting requirements.

4. COMMENT: One commenter stated that the information requested by the Commissioner at proposed N.J.A.C. 11:1-7.3(g)3 and 4 clearly exceeds the plain language of the enabling statute by including information reported to the Medical Practitioner Review Panel and any other information requested by the Commissioner. The commenter added that had the Legislature included broader language permitting the Commissioner to gather additional information, patient groups and others whose privacy is being placed in jeopardy may very well have objected.

Another commenter stated that it would reserve its right to comment on proposed N.J.A.C. 11:1-7.3(g)4, permitting the Commissioner to request any other information related to the claim settlement, judgment or arbitration award on the form

produced on the Department's website, when it becomes aware of such informational request.

RESPONSE: The Department does not necessarily agree with the commenter that the Department surpassed its legislative authority in requesting additional relevant information relating to the claim settlement, judgment or arbitration award. While the legislation directs that the insurers' notification is required to include certain information, the statute does not contain language expressly limiting the Department to requesting only those items. Nevertheless, as stated in the previous Response, the Department is revising the proposed rule upon adoption to request that insurers provide only basic information necessary and relevant for tracking medical malpractice awards in order to identify trends in the marketplace and not any information relating to claimants or the identity of practitioners.

5. COMMENT: Two commenters expressed concern with proposed N.J.A.C. 11:1-7.3(h). One commenter questioned whether an insurer is required to provide notice even if it intends to file an appeal or seek trial *de novo* regarding judgments and arbitration awards. If required, what happens if the result is then later modified, reversed or remanded for further proceedings?

One commenter questioned whether an insurer is required to give notice as soon as it reaches an oral agreement or only after releases or settlement agreements are signed and exchanged. Further, in cases involving infants or incompetents, are insurers required to obtain court approval of those agreements before notice is given?

One commenter requested clarification as to whether partial settlements versus final settlements are required to be reported.

Two commenters suggested alternative approaches to the proposed start date for the seven-day reporting requirement. One commenter suggested requiring insurers to give notice within seven days of issuing an indemnity payment pursuant to any agreement, judgment or arbitration award. One commenter stated that insurers currently follow the National Practitioner Data Bank rules, which require reporting 30 days after payment is made, and suggested that consistent reporting deadlines be established to facilitate efficiency.

RESPONSE: N.J.A.C. 11:1-7.3(h) requires insurers to deliver notice to the Department no later than seven days after "the settlement, judgment or arbitration award is **officially** agreed to or entered." The Department's intent was that notice be provided only after an official document (that is, release, settlement agreement, or other document) has been agreed to and signed by all parties. The Department's intent regarding cases involving infants or incompetents was that a settlement, judgment or arbitration award would not become official until after court approval has been obtained.

Insurers are required to provide notice to the Department of all medical malpractice claims, settlements, judgments and arbitration awards regardless of whether they may be appealed or are partial. The Department's revised rule requires that insurers provide the claim number so that the Department will be aware of

whether multiple reports have been filed for the same claim, as well as whether the report amends a previously filed report.

The Department does not believe it is necessary to amend the seven-day reporting requirement as proposed at N.J.A.C. 11:1-7.3(h) because it is consistent with the Department's existing rule at N.J.A.C. 11:1-7.3(d) requiring notice by insurers to the Medical Practitioner Review Panel no later than seven days after the settlement, judgment or arbitration award is officially agreed to or entered.

Summary of Agency-Initiated Changes:

1. The Department is correcting a spelling error at proposed N.J.A.C. 11:1-7.3(h) by changing "judgement" to "judgment."
2. The Department is removing "of Banking and Insurance" in the first sentence of N.J.A.C. 11:1-7.3 as unnecessary because "Commissioner" appears in the definitions section at N.J.A.C. 11:1-7.2.
3. The Department is updating the definition of "Commissioner" at N.J.A.C. 11:1-7.2 to mean the Commissioner of the Department of Banking and Insurance.
4. The Department is including a provision at N.J.A.C. 11:1-7.3(h) to allow for regular mail delivery of the required notice to the Department as a convenience to those insurers who may prefer that form of delivery.

Federal Standards Statement

A Federal standards analysis is not required because these adopted amendments are not subject to any Federal standards or requirements.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

SUBCHAPTER 7. MEDICAL MALPRACTICE REPORTING REQUIREMENTS

11:1-7.2 Definitions

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

"Commissioner" means the Commissioner of the New Jersey Department of ***Banking and*** Insurance.

11:1-7.3 Medical malpractice reporting requirements

(a) – (f) (No change.)

(g) All insurers or insurance associations authorized to issue medical malpractice liability insurance in the State shall notify the Commissioner ***[of Banking and Insurance]*** of any medical malpractice claim settlement, judgment or arbitration award involving any practitioner licensed by the State Board of Medical Examiners and insured by the insurer or association. The notification shall be made regardless of whether the practitioner is currently insured by the insurer or association at the time of the settlement, judgment or arbitration award. ***[The notifications shall be made on the Medical Malpractice Payment Report form of the National Practitioner Data Bank or its equivalent as produced on the Department's website.]*** The notification shall not

include the name or other identifying information of the practitioner ***or claimant***, but shall contain the following information:

- *[1. The specialty or area of professional practice of the practitioner;
- 2. The amount of the settlement, judgement or arbitration award;
- 3. The information pertaining to the claim settlement, judgment or arbitration award required to be reported to the Medical Practitioner Review Panel pursuant to (c)3 above; and
- 4. Any other information related to the claim settlement, judgement or arbitration award specified by the Commissioner on the form produced on the Department's website.]*

***1. The claim number;**

2. An indicator if the form is amending a previously filed report;

3. The specialty or area of professional practice of the practitioner;

4. The practitioner's zip code;

5. The date of the loss;

6. A description of the claim/loss;

7. The final disposition;

8. The settlement date; and

9. The amount of the settlement, judgment or arbitration award.*

(h) The notice referred to in (g) above shall be delivered to the Department electronically *** or by regular mail*** no later than seven days after the settlement,

[judgement] **judgment*** or arbitration award is officially agreed to or entered.

The notice shall be *[e-mailed]* **addressed*** to the Department at:

Med Mal Claim Reporting

Department of Banking and Insurance

Consumer Protection, Market Analysis Unit

PO Box 329

Trenton, NJ 08625

E-mail: medmalclrep@dobi.state.nj.us*

inoregs/bbmedmalrpt